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सत्यमेव जयते

भारत का राजपत्र
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सं. 1] नई दिल्ली, शनिवार, जनवरी 4, 2003/पौष 14, 1924
No. 1] NEW DELHI, SATURDAY, JANUARY 4, 2003/PAUSA 14, 1924

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-Section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India (other than the Ministry of Defence)

वित्त एवं कम्पनी कार्य मंत्रालय

(राजस्व विभाग)

आदेश

नई दिल्ली, 4 दिसम्बर, 2002

स्टाम्प

का.आ. 1.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप-धारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा इंडियन ओवरसीज बैंक, चेन्नई को मात्र एक करोड़ पचहत्तर लाख रुपये का समेकित स्टाम्प शुल्क अदा करने की अनुमति प्रदान करती है जो उक्त बैंक द्वारा 31 अक्तूबर, 2002 को आवंटित मात्र एक सौ पचहत्तर करोड़ रुपये के प्रोमिसरी नोटों के स्वरूप वाले असुरक्षित विमोच्य अपरिवर्तनीय गौण बंधपत्र-श्रृंखला IV पर स्टाम्प शुल्क के कारण प्रभार्य है।

[सं. 51/2002-स्टाम्प/फा.सं. 33/75/2002-बि.क.]

आर.जी. छाबड़ा, अवर सचिव

MINISTRY OF FINANCE & COMPANY AFFAIRS

(Department of Revenue)

ORDER

New Delhi, the 4th December, 2002

STAMPS

S.O. 1.—In exercise of the powers conferred by clause (b) of sub-Section (1) of Section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Goverment hereby permits Indian Overseas Bank, Chennai to pay consolidated stamp duty of rupees one crore seventy five lakh only chargeable on account of the stamp duty on Unsecured Redeemable Non-Convertible Subordinated Bonds Series-IV in the nature of promissory notes aggregating to rupees one hundred seventy five crore only allotted on 31st October, 2002, by the said Bank.

[No. 51/2002-STAMP/F.No. 33/75/2002-ST]

R.G. CHHABRA, Under Secy.

आदेश

नई दिल्ली, 13 दिसम्बर, 2002

स्टाम्प

का.आ. 2.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप-धारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा अपोलो हॉस्पीटल्स, चेन्नई को मात्र तेंतीस लाख पचहत्तर हजार रुपए का समेकित स्टाम्प शुल्क अदा करने की अनुमति प्रदान करती है जो उक्त "हास्पीटल" द्वारा जारी किए जाने वाले 1210001 से 1210025 तक की विशिष्ट संख्या वाले एक-एक करोड़ रुपए मूल्य के 25 करोड़ रुपए के समग्र मूल्य के 10.80% एवं सुरक्षित विमोच्य अपरिवर्तनीय ऋण-पत्रों तथा 1200026 से 1200225 तक की विशिष्ट संख्या वाले दस-दस लाख रुपए मूल्य के बीस करोड़ रुपए के समग्र मूल्य के 8.57% सुरक्षित विमोच्य अपरिवर्तनीय ऋण-पत्रों पर स्टाम्प शुल्क के कारण देय है।

[सं. 53/2002-स्टाम्प/फा.सं. 33/63/2002-बि.क.]
आर.जी. छाबड़ा, अवर सचिव

ORDER

New Delhi, the 13th December, 2002

STAMPS

S.O. 2.—In exercise of the powers conferred by clause (b) of Sub-section (1) of Section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits Apollo Hospitals, Chennai to pay consolidated stamp duty of rupees thirty three lakh seventy five thousand only chargeable on account of the stamp duty on 10.80% secured redeemable non-convertible Debentures bearing distinctive numbers from 1210001 to 1210025 of rupees one crore each aggregating to rupees twenty five crore only and 8.57% secured redeemable non-convertible Debentures bearing distinctive numbers from 1200026 to 1200225 of rupees ten lakh each aggregating to rupees twenty crore only, to be issued by the said Hospital.

[No. 53/2002-STAMP/F.No.33/63/2002-ST]
R. G. CHHABRA, Under Secy.

केन्द्रीय उत्पाद शुल्क एवं सीमा शुल्क आयुक्त का कार्यालय

नागपुर, 17 दिसम्बर, 2002

संख्या 05/2002

का.आ. 3.—श्री जे.एन. धोटे, अधीक्षक, समूह 'ख' केन्द्रीय उत्पाद एवं सीमा शुल्क आयुक्तालय, नागपुर, निवर्तन की आयु प्राप्त करने पर दिनांक 30-11-2002 की अपराह्न में शासकीय सेवा से निवृत्त हुये।

[फा.सं. II(7)4/97/स्था. I]
के.सी. अग्रवाल, संयुक्त आयुक्त (कार्मिक एवं सतर्कता)

OFFICE OF THE COMMISSIONER CENTRAL EXCISE & CUSTOMS

Nagpur, the 17th December, 2002

NO. 05/2002

S.O. 3.—Shri J. N. Dhote, Superintendent, Group 'B' Central Excise and Customs, Nagpur Commissionerate, having attained the age of Superannuation, retired from Government Service in the afternoon of 30-11-2002.

[F. No. II(7)4/97/Et. I]
K. C. AGRAWAL, Jt. Commissioner (P&V)

(आर्थिक कार्य विभाग)

शुद्धिपत्र

नई दिल्ली, 17 दिसम्बर, 2002

का.आ. 4.—सरकारी आवासों (प्रतिभूति कागज कारखाना, होशंगाबाद) के आवंटन से संबंधित अधिसूचना सं. 8(6)/88-करेंसी-1 (एसपीएम) दिनांक 6 मई, 2002 (राजपत्र की अधिसूचना सं. का. आ. 2002 की 1783)। पैरा 1 की पंक्ति 4 में वर्ष 2001 को वर्ष 2002 पढ़ा जाए। अधिसूचना की अन्य सभी प्रविष्टियां यथावत रहेंगी।

[फा.सं. 8(6)/88-करेंसी-1 (एसपीएम)]
आर.के. मागो, अवर सचिव (करेंसी)

(Department of Economic Affairs)

CORRIGENDUM

New Delhi, 17th December 2002

S.O. 4.— Reference Notification No. 8(6)/-88-Cy.1 (SPM) dated 6th May 2002 (Gazette Notification No. S.O. 1783 of 2002) regarding Allotment of Government Residences (Security Paper Mill, Hoshangabad). In the line 4 of para 1, the year 2001 may be read as 2002. All other entries in the Notification shall remain the same.

[F.No. 8(6)/88-Cy.1(SPM)]
R. K. MAGGO, Under Secy. (Cy.)

(बैंकिंग प्रभाग)

आदेश

नई दिल्ली, 21 दिसम्बर, 2002

का.आ. 5.—यतः वित्तीय आस्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित प्रवर्तन अधिनियम, 2002 (2002 का 54) (जिसे इसके पश्चात् उक्त अधिनियम कहा जाएगा) जिसे 17 दिसम्बर, 2002 को राष्ट्रपति की सहमति प्राप्त है;

और यतः किसी भी प्रतिभूतिकरण कंपनी या पुनर्गठन कंपनी को उक्त अधिनियम की धारा 3 की उप-धारा (1) के अंतर्गत पंजीकरण प्रमाण-पत्र प्राप्त किए बिना प्रतिभूतिकरण या आस्ति पुनर्गठन का कारोबार प्रारम्भ करने या जारी रखने की अनुमति नहीं दी जाए ;

और यतः उक्त उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए कोई प्रतिभूतिकरण कंपनी या पुनर्गठन कंपनी जो उक्त अधिनियम के शुरूआत से पहले से विद्यमान है, को ऐसे प्रारम्भ से छः महीने बीतने से पूर्व भारतीय रिजर्व बैंक से पंजीकरण हेतु आवेदन करना होगा ;

और यतः उक्त अधिनियम 21 जून, 2002 को लागू हुआ जिसे पहले अध्यादेश के रूप में प्रख्यापित किया गया था;

और यतः उक्त अधिनियम की धारा 3 की उप-धारा (1) के अंतर्गत निर्धारित समय-सीमा 20 दिसम्बर, 2002 को समाप्त हो गई;

और यतः भारतीय रिजर्व बैंक उन मार्गनिर्देशों को अंतिम रूप नहीं दे सका जिसके अंतर्गत विद्यमान प्रतिभूतिकरण या पुनर्गठन कंपनियों द्वारा पंजीकरण के लिए आवेदनों का निपटान किया जा सके ;

और यतः छः महीने की उक्त अवधि के बीतने से पूर्व आवेदन नहीं कर पाने वाले विद्यमान प्रतिभूतिकरण या पुनर्गठन कंपनियों को सुविधा प्रदान करने के उद्देश्य से तीन महीने की अवधि के लिए उक्त समय-सीमा का विस्तार करने हेतु उक्त अधिनियम के उपबंधों को प्रभावी बनाना आवश्यक हो गया है ।

अतः अब वित्तीय आस्तियों के प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित प्रवर्तन अधिनियम, 2002 (2002 का 54) की धारा 40 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार, एतद्द्वारा निम्नलिखित आदेश देती है, नामतः :—

1. संक्षिप्त नाम एवं प्रारम्भ.—(1) इस आदेश को वित्तीय आस्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित प्रवर्तन (कठिनाई निराकरण) आदेश, 2002 कहा जा सकेगा ।

(2) यह तत्काल लागू हो जाएगा ।

2. पंजीकरण के लिए आवेदन करने की समय-सीमा—इस अधिनियम के शुरूआत से विद्यमान प्रतिभूतिकरण कंपनी या पुनर्गठन कंपनी उक्त अधिनियम की धारा 3 की उप-धारा (1) के अंतर्गत 20 मार्च, 2003 से पूर्व भारतीय रिजर्व बैंक में पंजीकरण के लिए आवेदन करेगी ।

[फा. सं. 1/5/2002–बीओ-I]

विनोद राय, संयुक्त सचिव (आई.एफ.)

(Banking Division)

ORDER

New Delhi, the 21st December, 2002

S.O. 5.—Whereas the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002) (hereinafter referred to as the said Act) received assent of the President on the 17th December, 2002;

And whereas no Securitisation company or reconstruction company shall be permitted to commence or carry on the business of the Securitisation or asset reconstruction without obtaining a certificate of registration under sub-section (1) of Section 3 of the said Act;

And whereas in exercise of the powers conferred by the said sub-section (1), a Securitisation company or a reconstruction company existing on the commencement of the said Act shall make an application for registration to the Reserve Bank of India before the expiry of six months from such commencement;

And whereas the said Act which was first promulgated as an Ordinance came into force on the 21st June, 2002;

And whereas the time limit prescribed under sub-section (1) of Section 3 of the said Act expired on 20th December, 2002;

And whereas the Reserve Bank of India could not finalise the guidelines under which the applications for registration by the existing Securitisation or reconstruction companies be dealt with;

And whereas it has become necessary for giving effect to the provisions of the said Act to extend the said time limit for a period of three months in order to facilitate the existing Securitisation or reconstruction companies which have not been able to apply before the expiry of the said period of six months;

Now, therefore, in exercise of the powers conferred by Section 40 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), the Central Government hereby makes the following Order, namely ;

1. Short title and commencement.—(1) This Order may be called the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Removal of Difficulties) Order, 2002.

(2) It shall come into force at once.

2. Time limit for making application for registration. A Securitisation company or reconstruction company, existing on the commencement of this Act, shall make an application for registration to the Reserve Bank of India before the 20th March, 2003, under sub-section (1) of Section 3 of the said Act.

[F. No. 1/5/2002-B.O.-I]
VINOD RAI, Jt. Secy. (IF)

नई दिल्ली, 23 दिसम्बर, 2002

का.आ. 6.—बैककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 56 के साथ पठित धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक की सिफारिश पर घोषणा करती है कि उक्त अधिनियम की धारा 11 की उपधारा (1) के उपबंध सरकारी राजपत्र में इस अधिसूचना के प्रकाशन की तारीख से 31 मार्च, 2005 तक जामनगर जिला सहकारी बैंक लि., जामनगर (गुजरात) पर लागू नहीं होंगे ।

[फा.सं. 1(17)/2002-एसी]
मंगल मराण्डी, अवर सचिव

New Delhi, the 23rd December, 2002

S.O. 6.—In exercise of the powers conferred by Section 53 read with Section 56 of the Banking Regulation Act, 1949 (10 of 1949) the Central Government on recommendation of the Reserve Bank of India declares that the provisions of sub-section (1) of Section 11 of the said Act shall not apply to The Jamnagar District Co-operative Bank Ltd., Jamnagar (Gujarat) from the date of publication of this notification in the Official Gazette to 31st March 2005.

[F. No.1(17)/2002-AC)]
MANGAL MARANDI, Under Secy.

स्वास्थ्य एवं परिवार कल्याण मंत्रालय

(स्वास्थ्य विभाग)

नई दिल्ली, 23 दिसम्बर, 2002

का. आ. 7.—दन्त चिकित्सक अधिनियम, 1948 (1948 का 16) की धारा 10 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार भारतीय दंत चिकित्सा परिषद से परामर्श करने के बाद एतद्द्वारा उक्त अधिनियम की अनुसूची के भाग-I में निम्नलिखित संशोधन करती है, अर्थात् :—

अनुसूची के भाग-I में क्रम संख्या 56 और उससे संबद्ध प्रविष्टियों के सामने निम्नलिखित प्रविष्टियां जोड़ी जाएंगी, अर्थात् :—

57.	अलीगढ़ मुस्लिम विश्वविद्यालय, अलीगढ़	दन्त शल्य चिकित्सा स्नातक डेंटल कालेज एंड हास्पिटल, फैकल्टी ऑफ मेडिसिन अलीगढ़ मुस्लिम विश्वविद्यालय, अलोगढ़ के बी. डी. एस. छात्रों के संबंध में दन्त चिकित्सा अर्हता तभी मान्यताप्राप्त अर्हता होगी जब यह 23 और 24 सितम्बर, 2002 को अथवा उसके बाद प्रदान की गई हो।	बी. डी. एस. अलीगढ़ मुस्लिम विश्वविद्यालय, अलोगढ़

[संख्या वी. 12018/23/2002-पी एम एस]
एस. के. राव, निदेशक (एम ई)

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health)

New Delhi, the 23rd December, 2002

S.O. 7.—In exercise of the powers conferred by sub-section (2) of Section 10 of the Dentists Act, 1948 (16 of 1948), the Central Government, after consultation with Dental Council of India, hereby makes the following amendments in Part-I of the Schedule to the said Act, namely :—

In Part I of the Schedule after Serial Number 56, and the entries relating thereto, the following entries shall be added, namely :

57.	Aligarh Muslim University, Aligarh.	Bachelor of Dental Surgery The dental qualification shall be recognized qualifications in respect of BDS students of Dental College and Hospital, Faculty of Medicine, Aligarh Muslim University, Aligarh when granted on or After 23rd and 24th September, 2002.	BDS Aligarh Muslim University, Aligarh.

[No. V.12018/23/2002-PMS]
S. K. RAO, Director (ME)

नई दिल्ली, 23 दिसम्बर, 2002

का. आ. 8.—केन्द्रीय सरकार, भारतीय आयुर्विज्ञान अधिनियम, 1956 (1956 का 102) की धारा 11 की उपधारा (2) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारतीय चिकित्सा परिषद् के परामर्श के पश्चात् उक्त अधिनियम की प्रथम अनुसूची में निम्नलिखित और संशोधन करती है; अर्थात् :

उक्त प्रथम अनुसूची में "हिमाचल प्रदेश विश्वविद्यालय" के पश्चात् "विश्वविद्यालय या आयुर्विज्ञान संस्थान" के शीर्षक के अधीन और उससे संबंधित प्रविष्टियों के "मान्यता प्राप्त आयुर्विज्ञान अर्हता" और "संक्षिप्ताक्षर" शीर्षक के अधीन को क्रमश: निम्न प्रकार से रखा जाएगा, अर्थात् :—

विश्वविद्यालय या आयुर्विज्ञान संस्थान	मान्यता प्राप्त आयुर्विज्ञान अर्हता	संक्षिप्ताक्षर
"एच. एन. बी. गढ़वाल विश्वविद्यालय"	बैचलर ऑफ मेडिसन एंड बेचलर ऑफ सर्जरी (यह अर्हता तभी मान्यता प्राप्त चिकित्सीय अर्हता होगी जब हिमालयन इंस्टीट्यूट ऑफ मेडिकल साइंसेज, देहरादून में प्रशिक्षित छात्रों को मार्च, 2001 में या उसके पश्चात् प्रदान की गई हो)"	एम. बी. बी. एस.

[सं. वी-11015/7/2002-एम. ई. (नीति-I)]
पी. जी. कलाधरन, अवर सचिव

New Delhi, the 23rd December, 2002

S.O. 8.—In exercise of the powers conferred by sub-section (2) of Section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consultation with the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely :—

In the said First Schedule, after "Himachal Pradesh University" under the heading "University or Medical Institution" and the entries relating thereto under the headings "Recognised Medical Qualifications" and "Abbreviation" the following shall respectively be inserted namely :

University or Medical Institution	Recognised Medical Qualification	Abbreviation
"H.N.B. Garhwal University	Bachelor of Medicine and Bachelor of Surgery (This qualification shall be a recognised medical qualification when granted in or after March, 2002 in respect of students being trained at Himalayan Institute of Medical Sciences, Dehradun)".	M.B.B.S.

[No. V-11015/7/2002-ME (Policy-I)]
P. G. KALADHARAN, Under Secy.

नई दिल्ली, 23 दिसम्बर, 2002

का. आ. 9.—दन्त चिकित्सक अधिनियम, 1948 (1948 का 16) की धारा 10 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार भारतीय दंत चिकित्सक परिषद से परामर्श करने के बाद एतद्द्वारा उक्त अधिनियम की अनुसूची के भाग-I में निम्नलिखित संशोधन करती है, अर्थात् :—

अनुसूची के भाग-I में क्रम संख्या 34 और उससे संबंद्ध प्रविष्टियों के सामने निम्नलिखित प्रविष्टियां जोड़ी जाएंगी, अर्थात् :—

34.	तमिलनाडु डा. एम. जी. आर. मेडिकल यूनिवर्सिटी, चेन्नई।	दन्त शल्य चिकित्सा स्नातक एस. आर. एम. डेंटल कालेज के बी. डी. एस. छात्रों के संबंध में दन्त चिकित्सा अर्हता तभी मान्यता प्राप्त अर्हता होगी जब यह 9 और 10 जुलाई, 2002 को अथवा उसके बाद प्रदान की गई हो।	बी. डी. एस. तमिलनाडु डा. एम. जी. आर. मेडिकल यूनिवर्सिटी, चेन्नई।

[संख्या वी. 12018/21/2002-पी एम एस]

एस. के. राव, निदेशक (एमई)

New Delhi, the 23rd December, 2002

S.O. 9.—In exercise of the powers conferred by sub-section (2) of Section 10 of the Dentists Act, 1948 (16 of 1948), the Central Government, after consultation with Dental Council of India, hereby makes the following amendments in Part-I of the Schedule to the said Act, namely :—

In Part I of the Schedule against Serial Number 34, and the entries relating thereto, the following entries shall be added, namely :

34.	Tamil Nadu Dr. M.G.R. Medical University, Chennai.	Bachelor of Dental Surgery The dental qualification shall be recognized qualifications in respect of BDS students of SRM Dental College, Chennai when granted on or after 9th and 10th July, 2002.	BDS Tamil Nadu Dr. M.G.R. Medical University, Chennai.

[No. V-12018/21/2002-PMS]

S. K. RAO, Director (ME)

नई दिल्ली, 23 दिसम्बर, 2002

का. आ. 10.—भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा 3 की उपधारा (1) के खण्ड (ख) के अनुसरण में डा. पी. वी. हयावदना राव, डीन, विश्वविद्यालय का चिकित्सा संकाय अन्नामलाई विश्वविद्यालय, अन्नामलाई की सीनेट द्वारा इस अधिसूचना के जारी होने की तारीख से भारतीय आयुर्विज्ञान परिषद् के एक सदस्य के रूप में निर्वाचित किया गया है।

अतः अब उक्त अधिनियम की धारा 3 की उपधारा (1) के उपबन्ध के अनुसरण में केन्द्र सरकार एतद्द्वारा तत्कालीन स्वास्थ्य मंत्रालय, भारत सरकार की दिनांक 9 जनवरी, 1960 की अधिसूचना सं. का.आ. 138 में निम्नलिखित और संशोधन करती है अर्थात् :—

उक्त अधिसूचना में धारा 3 की उपधारा (1) के खण्ड (ख) के अधीन निर्वाचित' शीर्षक के अंतर्गत क्रम संख्या 70 और उससे संबंधित प्रविष्टियों के स्थान पर निम्नलिखित क्रम संख्या और प्रविष्टियां प्रतिस्थापित की जाएंगी अर्थात् :—

"70. डा. पी. वी. हयावदना राव, अन्नामलाई विश्वविद्यालय"
डीन, चिकित्सा संकाय,
अन्नामलाई विश्वविद्यालय,
अन्नामलाई नगर-608002.

[संख्या वी-11013/2/2002-एम.ई. (नीति-I.)]

पी.जी. कलाधरण, अवर सचिव

New Delhi, the 23rd December, 2002

S.O. 10.—Whereas in pursuance of clause (b) of sub-section (1) of Section 3 of the Indian Medical Council Act, 1956 (102 of 1956) Dr. P.V. Hayavadana Rao, Dean, Faculty of Medicine in the University, has been elected by the Senate of the Annamalai University, Annamalainagar to be a member of the Medical Council of India for the period from the date of issue of this notification.

Now, therefore, in pursuance of the provision of sub-section (1) of Section 3 of the said Act, the Central Government hereby makes the following further amendment in the Notification of the Government of India in the then Ministry of Health no. S.O. 138, dated the 9th January, 1960, namely :—

In the said Notification, under the heading, 'Elected under clause (b) of sub-section (1) of section 3', for serial number 70 and the entry relating thereto the following serial number and entry shall be substituted, namely :—

"70.	Dr. P.V. Hayavadana Rao, Dean, Faculty of Medicine, Annamalai University, Annamalainagar-608002	Annamalai University"

[No. V-11013/2/2002-ME(Policy-I)]

P.G. Kaladharan, Under Secy.

कोयला और खान मंत्रालय

(कोयला विभाग)

नई दिल्ली, 24 दिसम्बर, 2002

का.आ. 11.—केन्द्रीय सरकार को प्रतीत होता है, कि इससे उपाबद्ध अनुसूची में उल्लेखित भूमि में कोयला अभिप्राप्त किए जाने की संभावना है ;

अतः अब, केन्द्रीय सरकार कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उपधारा (i) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस क्षेत्र में कोयले का पूर्वेक्षण करने के अपने आशय की सूचना देती है ;

इस अधिसूचना के अंतर्गत आने वाले रेखांक सं. सी-1(ई)III/एफआर/698-0702, तारीख 24 जुलाई, 2002 का निरीक्षण वेस्टर्न कोलफील्ड्स लिमिटेड (राजस्व विभाग), कोल ईस्टेट, सिविल लाईन्स, नागपुर-440 001 (महाराष्ट्र) के कार्यालय में या कलेक्टर, नागपुर (महाराष्ट्र) के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाऊस स्ट्रीट, कोलकाता के कार्यालय में किया जा सकता है ;

इस अधिसूचना के अंतर्गत आने वाली भूमि में, हितबद्ध सभी व्यक्ति उक्त अधिनियम की धारा 13 की उपधारा (7) में निर्दिष्ट सभी नक्शों, चार्टों और अन्य दस्तावेजों को इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से नब्बे (90) दिनों के भीतर भारसाधक अधिकारी/विभागाध्यक्ष (राजस्व) वेस्टर्न कोलफील्ड्स लिमिटेड, कोल ईस्टेट, सिविल लाईन्स, नागपुर-440 001 (महाराष्ट्र) को भेज सकेंगे ।

अनुसूची

नया गोंडेगांव घाटरोहना विस्तार खंड

नागपुर क्षेत्र

जिला नागपुर (महाराष्ट्र)

(रेखांक सं. सी-1(ई)III/एफआर/698-0702 तारीख 24 जुलाई, 2002)

क्रम संख्या	ग्राम का नाम	पटवारी सर्किल संख्या	तहसील	जिला	क्षेत्र हेक्टर में	टिप्पणी
1.	घाटरोहना	13	पारसिओनी	नागपुर	100.00	भाग
2.	जूनी कामठी	13	पारसिओनी	नागपुर	30.00	भाग
3.	बीना	16	कामठी	नागपुर	60.00	भाग

कुल क्षेत्र—190.00 हेक्टर (लगभग)

या

469.50 एकड़ (लगभग)

सीमा वर्णन :

क-ख : रेखा 'क' बिन्दु से आरम्भ होती है और ग्राम बीना से होते हुए जाती है, कन्हान नदी पार करती है और ग्राम जूनी कामठी से होते हुए आगे बढ़ती है और बिन्दु 'ख' पर मिलती है ।

ख-ग : रेखा ग्राम जूनी कामठी से होते हुए जाती है और बिन्दु 'ग' पर मिलती है ।

ग-घ-ङ : रेखा ग्राम घाटरोहना से होते हुए जाती है और बिन्दु 'ङ' पर मिलती है ।

ङ-च : रेखा ग्राम घाटरोहना से होते हुए जाती है, कन्हान नदी पार करती है और ग्राम बीना से होते हुए आगे बढ़ती है और बिन्दु 'च' पर मिलती है ।

च-क : रेखा ग्राम बीना से होते हुए जाती है और आरंभिक बिन्दु 'क' पर मिलती है ।

[सं. 43015/12/2002/ पीआरआईडब्ल्यू]

संजय बहादुर, उप सचिव

MINISTRY OF COAL AND MINES

(Department of Coal)

New Delhi, the 24th December, 2002

S.O. 11.—Whereas it appears to the Central Government that coal is likely to be obtained from the lands mentioned in the Schedule hereto annexed;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 4 of the Coal Bearing Areas (Acquisition and Development) (Act, 1957 20 of 1957) (hereinafter referred to as the said Act), the Central Government hereby gives notice of its intention to prospect for coal therein;

The plan bearing No. C-I(E)III/FR/698-0702 dated the 24th July, 2002 of the area covered by this notification can be inspected in the office of the Western Coalfields Limited (Revenue Department), Coal Estate, Civil Lines, Nagpur-440 001 (Maharashtra) or in the office of the Coal Collector, Nagpur (Maharashtra) or in the office of the Coal Controller, 1, Council House Street, Kolkata.

All persons interested in the lands covered by this notification may deliver all maps, charts and other documents referred to in sub-section (7) of Section 13 of the said Act to the Officer-in-Charge/Head of the Department (Revenue), Western Coalfields Limited, Coal Estate, Civil Lines, Nagpur-440 001 (Maharashtra) within ninety days from the date of publication of this notification in the Official Gazette.

SCHEDULE

New Gondegaon-Ghatrohana Extension Block

Nagpur Area, District Nagpur (Maharashtra)

(Plan No. C-I(E)III/FR/698-0702 dated the 24th July, 2002).

Sl. No.	Name of village	Patwari circle number	Tahsil	District	Area in hectares	Remarks
1.	Ghatrohana	13	Parseoni	Nagpur	100.00	Part
2.	Juni-Kamptee	13	Parseoni	Nagpur	30.00	Part
3.	Bina	16	Kamptee	Nagpur	60.00	Part

Total Area : 190.00 hectares (approximately) or 469.50 acres (approximately)

Boundary description :—

A—B : Line starts from point 'A' and passes through village Bina, crosses Kanhan River and proceeds through village Juni-Kamptee and meets at point 'B'.

B—C : Line passes through village Juni-Kamptee and meets at point 'C'.

C—D—E : Line passes through village Ghatrohana and Meets at point 'E'.

E—F : Line passes through village Ghatrohana, crosses Kanhan River and proceeds through village Bina and meets at point 'F'.

F—A : Line passes through village Bina and Meets at starting point 'A'.

[No. 43015/12/2002/PRIW]

SANJAY BAHADUR, Dy. Secy.

श्रम मंत्रालय

नई दिल्ली, 3 दिसम्बर, 2002

का. आ. 12.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार हटटी गोल्ड माइन्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बैंगलोर के पंचाट (संदर्भ संख्या 75/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-12-2002 को प्राप्त हुआ था।

[सं. एल-43011/1/99-आई.आर. (विविध)]

बी. एम. डेविड, अवर सचिव

MINISTRY OF LABOUR

New Delhi, the 3rd December, 2002

S.O. 12.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 75/99) of the Central Government Industrial Tribunal/ Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Hutti Gold Mines and their workman, which was received by the Central Government on 2-12-2002.

[No. L-43011/1/99-IR(M)]

B.M. DAVID, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT.

BANGALORE.

Dated: 25th November, 2002

PRESENT

HON'BLE SHRI V.N. KULKARNI, B.COM. LLB,
PRESIDING OFFICER

CCRR- CUM - LABOUR COURT,

BANGALORE.

C.R. No. 75/99

I PARTY	II PARTY
Shri I.M. Siddalingaiah & Others, Ingaldal Post, Chitradurga Taluk. Chitradurga-577501	The Executive Director, Hutti Gold Mines Co. Ltd., Chitradurga Gold Unit, P.B. No. 4, Chitradurga- 577501

AWARD

The Central Government by exercising the powers conferred by clause (d) of sub-section (2A) of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-43011/1/99-IR(M)dated 7th for adjudication on the following schedule :

2. Counsels for the parties are present. Officers of the Management are present. This is a dispute referred by the Govt. of India vide No. L-43011/1/99/IR(M) because the management has denied one month pay in lieu of notice period to 109 workman to opt for Voluntary Retirement.

3. Parties appeared and filed Claim Statement and Counter respectively.

4. At the stage of recording evidence and hearing arguments it was suggested to the management and the workman that amicably matter can be settled. The learned counsels appearing for the parties and the officers of the Hutti Gold Mines fairly conceded that they will settle the matter. With all fairness it is reported by both sides that the matter is settled.

5. The management and the learned counsels appearing for the workmen have filed signed settlement memo.

6. I have read the same in detail. I have verified the same. I have heard Mr. Madhu Sudan for the workmen and the learned counsel for the management. The management has agreed to pay 60 per cent of the amount claimed towards one month salary in lieu of notice of VRS. The learned counsel for the workmen agreed.

7. Both sides agreed to settle the matter and settled the dispute. Accordingly I pass the following Order.

ORDER

Award is passed in terms of Settlement memo and the reference is disposed off. Today Mr. Kishore Kumar, the Personal Officer of the Hutti Gold Mines is present and he has handed over 109 cheques in view settlement worked out at 60 per cent. The cheques are received by Mr. Madusudan, the learned counsel appearing for the workmen.

At this stage it is reported by both sides that 11 workmen have expired. Mr. Madusudan to file legal heirs certificate of the 11 workmen and encash the amount. All the cheques are individually given in the name of each workman and they are handed over to Shri Madusudan, the learned counsel appearing for the workmen. Accordingly the matter is disposed off.

(Dictated to PA, transcribed by her, corrected and signed by me on 25th November, 2002)

V.N. KULKARNI, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2002

का. आ. 13.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत गोल्ड माइन्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बैंगलोर के पंचाट (संदर्भ संख्या 55/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-12-2002 को प्राप्त हुआ था।

[सं. एल-43012/3/95-आई.आर. (विविध)]

बी. एम. डेविड, अवर सचिव

New Delhi, the 3rd December, 2002

S.O. 13.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 55/97) of the Central Government Industrial Tribunal, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bharat Gold Mines and their workman, which was received by the Central Government on 2-12-2002.

[No. L-43012/3/95-IR(M)]

B.M. DAVID, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT,

BANGALORE.

Bangalore, the 18th November, 2002

PRESENT

HON'BLE SHRI V.N. KULKARNI, B.COM. LL.B,
PRESIDING OFFICER CGIT-CUM-LABOUR COURT,
BANGALORE

C.R. No. 55/97

I PARTY :	II PARTY
The President, Bharat Gold Miners Association No.545, Opp. Punjabi Quarters, Oorgaum, K.G.F-563120	The Managing Director, Bharat Gold Mines Ltd., Suvarna Bhawan, K.G.F-563120

AWARD

1. The Central Government by exercising the powers conferred by dause (d) of sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-43012/3/95-IR (Misc.) dated 12th July, 1995 for adjudication on the following schedule:

SCHEDULE

"Whether the action of the management of Bharat Gold Mines Ltd in terminating the services of Shri Mohammed Shafi w.e.f. 28.10.1992 is justified? If not, to what relief Shri Shaffi is entitled to and from which date?"

2. The first party was working with the Second Party. He was terminated from service and therefore, this Industrial Dispute is raised.

3. Parties appeared and filed Claim Statement and Counter respectively.

4. The workman has put in 14 years of service with the Management. The Management has illegally declared him unfit on 28.10.1992. Workman was working as a 1st Class Winding Engine Driver bearing PE No. 124604 in Champion Reef Mine, Bharat Gold Mines Ltd. of the Second Party Management. On 6.7.1992 while the workman was on duty was fainted and was unconscious for some time. He was taken to Medical Establishment of the Management and was an inpatient in the hospital. He was not discharged as he had some heart ailment and therefore he was transferred to Jayadeva Institute of Cardiology Department. He was examined in the Jayadeva Institute of Cardiology and the Director of the Jayadaeva Institute sent a letter dated 20.7.1992 stating that the patient Shri Mohammad Shaffi requires an open heart surgery and advised to deposit a sum of Rs.48,700/- with details to undertake the operation. The Director along with his letter enclosed the report of Clinical diagnosis besides an advice for admission of Shri Mohammad Shaffi in the Institute on 18.8.1992. The Management sent the workman to the Jayadeva Institute to undergo operation but he was treated as an out-patient and they asked him to appear before the Medical Board of BGML and was declared as medically unfit. He represented the Chief Engineer and the Chief Engineer made an endorsement on the representaion to consider the request of the employee favorably and forwarded the same to the CMO, BGML for consideration. He went on making representation but nothing was done. He gave petition and that was not replied.

5. The CMO advised him to get treatment for his heart ailment and produce fitness certificate so that the request can be considered. The workman approached Sri Sathya Sai Institute of Higher Medical Sciences, Andhra Pradesh and treated there. He got admitted in the said Institute on 17-2-1994 and an open heart surgery was conducted on him on 25-2-1994 and he was discharged on 9.3.1994 with a discharge summary and also providing a medical certificate. He brought the hand written certificate and produced the same to the CMO, BGML. He approached the management but the management has not given any job. The decision of the management is wrong. Workman for these reasons and for some other reasons has prayed to pass award in his favour.

6. As against this the case of the management in brief is as follows :

7. The appointment of the workman is admitted. It is also admitted that he was working as Winding Engine Driver. It is also said that the workman had a medical history from the year 1981 and there was some problem in Blood circulation. He was periodically examined and treatment was given. There was a heart ailment and he had also paralysis attack. He was referred to Jayadeva Institute of Cardiology for opinion and corrective procedure and the Institute advised him open heart surgery.

8. It is the further case of the management that on account of continuous ailment of the first party he was referred to the Medical Board of the Second Party and the Board after examining him said that he was not fit to work as Winding Engine Driver on surface or underground. The same was considered taking into account the physical fitness prescribed, under the Mines Act and Miners

Mettaliferrous Rules for engaging employees to work in mines. It is the further case of the management that after a gap of more than 2 years from the date of his discharge the workman obtained a certificate from Sri Sathya Sai Institute of Higher Medical Science and sought for reinstatement but the question of considering the workman for any other post was also not possible as the company already had surplus manpower even on surface and in fact the surplus workmen were being reduced by voluntary retirement scheme as the company was facing financial crisis. The workman was not able to do the job even subsequent to the surgery since he is a heart patient and not able to continue him in job. The decision of the Board is correct. Management for these reasons and for some other reasons has prayed to reject the reference.

9. It is seen from the records that the workman got examined himself on 13.10.1998 and gave detailed evidence in support of his claim. He has given detailed history and various documents are marked. This witness is examined again after remand on 22.10.2002.

10. Management also examined one witness Dr. Sampath Kumar, as MW1. According to the evidence of MW1, Dr. Sampath Kumar, he examined workman. He has stated that the workman had heart problem since 1981. He further says that since 1987 workman was on regular treatment and he was brought from workshop on 6.7.1992 and he was treated by duty Doctor. It was known case of multiple Valve Heart Problem. He was developing paralysis of one portion. He says that the workman was treated for 3 months and he was referred to Jayadeva Hospital for surgery. The Management referred workman to the Medical Board. Workman was a Winding Engine Driver.

11. EX.M1 to M5 are medical documents. During the cross examination, MW1 categorically admits that he is not specialized in medicine and Cardiology. He also says that he was not the member of the Medical Board whom the first party was referred. With this cross examination I can say that the evidence of MW1 will be not to help the management to prove anything against the workman.

12. In the instant case lot of documents regarding medical treatment are filed and that aspect is not disputed by the management.

13. According to the admitted facts, the workman was treated by the management hospital and then he was referred to Jayadeva Institute. He was examined by the Institute and advised for open heart surgery and direction was given by the Institute to deposit the amount for surgery. Thereafter the management kept quite. Management has not taken any step to arrange for heart surgery of the workman. Instead of not depositing the amount he was referred to Medical Board of the hospital.

14. I have already said that the evidence of Dr. Sampath Kumar, MW1 is not helpful because he is neither the member of the medical board to which the workman was referred nor he is the Specialist in Medicine and Cardiology.

15. There is not an iota of evidence of the Doctors consisting the board to which the workman was referred. We do not know whether the Doctors of the Board of Company are Heart Specialists and Cardiologists. In the absence of this it is very difficult to believe the case of the management that the workman is unfit medically to work as Driver.

16. It is seen from the records that this tribunal by its order dated 13th October, 1998 passed award in favour of workman saying that the management is not justified in terminating the services of the workman with some observations and directions.

17. After this the Company filed Writ Petition and the High Court of Karnataka allowed Writ Petition No.11889/99C/W 26161/2000 one in respect of the setting aside the award and the other in respect of Orders passed in the Miscellaneous Application by this Tribunal. The High Court of Karnataka remanded the dispute to decide as per the directions. After remand I have already said that the workman gave further evidence and the management examined Dr. Sampath Kumar, MW1

18. After remand absolutely there is no evidence on behalf of the management to justify its action saying that the workman is not medically fit to work as Driver. I have already said that the Doctors of the Medical Board are not examined. Even after remand there is no explanation from the management as to why open heart surgery was not arranged by the management as per the directions of the Jayadeva Institute. On the other hand we have the documents which are filed by the workman to establish that he took treatment in Sri Sathya Sai Institute of Higher Medical Sciences and got open heart surgery and went on representing the management to reinstate but the management has not taken any action.

19. It is also clear from the records that the workman gave representation to give him some light work on the surface and the Chief Engineer of the Company has made favourable endorsement but the management has not considered that endorsement. There is no explanation from the management as to why it failed to consider the recommendations made by the Chief Engineer of the Company. We have Ex. W6 and Ex. W9. Ex. W9 to the effect that the workman has undergone open heart surgery on 25.2.1994 and he was discharged on 9.3.1994. He was advised one week rest.

20. E.W8 is given by Sri Sathya Sai Institute of Higher Medical Sciences and according to this the workman was admitted in the said hospital on 19.2.1994 and discharged on 9.3.1994 after Cardiac Surgery. In Ex. W8, it is stated that the workman is fit for duty from 20.3.1994.

21. With this material I am of the opinion that the management is not justified in refusing job to the workman.

It is also clear from the material before us that the workman has still service and he is unemployed and he is suffering a loss financially. Management is not justified in refusing job.

22. It is also clear from the material before us that the workman has undergone mental agony and his dependents are suffering. It is also clear from the records that the management has not made any effort to assist the workman to get a better treatment. Actually the management should consider the case of the workman after he has undergone open heart surgery and produced fitness certificate but nothing is done, and therefore, the action of the management is not justified. Accordingly I proceed to pass the following Order :

ORDER

The Order of the Second Party Management terminating the services of Shri Mahammed Shaffi w.e.f. 28.10.1992 is set aside holding that it is not justified. The workman is entitled for reinstatement. The Management is directed that in the interest of justice it should provide some light duty in consultation with the CMO of Bharath Gold Mines Ltd Hospital. The fact that the workman is unable to discharge his heavy duties, I feel ends of justice will meet if the management is directed to pay a sum of Rs.40,000/-instead of any back wages. It is further directed the management should fixed his salary on the basis of continuation of service from 28.10.1992 and wages shall be paid to him after his reinstatement. Accordingly the reference is answered.

(Directed to PA transcribed by her corrected and signed by me on 18th November, 2002)

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2002

का. आ. 14.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एयरपोर्ट ऑथोरिटी ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचाट (संदर्भ संख्या 16/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-12-2002 को प्राप्त हुआ था।

[सं. एल-11012/15/2001-आई.आर. (विविध)]

बी. एम. डेविड, अवर सचिव

New Delhi, the 3rd December, 2002

S.O. 14.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 16/2001) of the Central Government Industrial Tribunal, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Airport Authority of India and their workman, which was received by the Central Government on 2-12-2002.

[No. L-11012/15/2001-IR(M)]

B.M. DAVID, Under Secy.

ANNEXURE

BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRBUNAL-CUM-

LABOUR COURT : NEW DELHI

PRESIDING OFFICER: SHRI B. N. PANDEY

I.D. NO. 16/2001

Shri V. Ambucherian
S/o P. Varadhar,
R/o RZ-1-10, Tamiliar Co. Vijay
Encl. Palam Rd. New Delhi-45 Workman

Versus

The Airport Director,
Airport Authority of India,
International Airport Division,
Terminal I, IGI Airport,
New Delhi-45. Management

AWARD

The Central Government in the Ministry of Labour vide its Order No.L.11012/15/2000/IR(M) dated 13-2-2001 referred the following industrial dispute to this Tribunal for adjudication:-

> "Whether the action of the management of Airport Authority of India, New Delhi in terminating/ discontinuing the services of Shri V. Anucherian, Sweeper w.e.f. 3-8-98 is just and legal ? If not what relief the said workman is entitled to and from what date?"

2. The reference was received and registered on 2-3-2001 and notice to parties was issued for 9-5-2001 for filing of claim. On 9-5-2001 Mrs. Bhawana Arora on behalf of Sh. Sanjeev Rohtagi appeared for management and memo of appearance filed and fresh registered A.D. Notice was ordered to be sent to the workman for 10-7-2001. On 10-7-2001 Shri R.K. Verma appeared for the workman and Shri Sanjeev Rohtagi for management and adjourned to 6-9-2001 for filing of claim. On 6-9-2001 Workman appeared in person and Shri Sanjeev Rohtagi for Management. On that day claim statement not filed and adjourned to 16-10-2001. On 16-10-2001 None appeared from eigher side and the post of Presiding Officer was lying vacant so the case was fixed for filing of claim on 12-11-2001. On 12-11-2001 Ms. Bhawana Arora appeared for the Management and nobody appeared for the workman and as no regular P.O. had joined so the case was adjourned to 18-1-2002 for filing of claim on 18-1-2002 None was present from either side and for filing of claim it was adjourned to 8-3-2002. On 8-3-2002 None for the workman appeared and Shri Sanjeev Rohtagi for management appeared and fresh registered notice was ordered to be issued to the

workman for filing of claim for 29-4-2002. On 29-4-2002 None for the workman appeared and Shri Sanjiv Rohtagi appeared for the Management. Despite notice the workman has not appeared nor filed his statement of claim till then. The case was ordered to be kept pending without date till further order. However it was ordered that if the workman files statement of claim a date shall be fixed for filing written statement by the opposite party and the Opposite Party shall be informed through regd. post accordingly. Again on 25-9-02 file was taken up and fresh notice to both parties fixing 28-10-02 for filing claim petition or statement if any was given. Today again None is present from either side. It appears that the workman is not interested in prosecuting the present reference. Hence No dispute award is passed in this case. Parties to bear thier own costs. Award is given accordingly.

B. N. PANDEY, Presiding Officer

Dated 28-10-2002

नई दिल्ली, 3 दिसम्बर, 2002

का. आ. 15.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसूर सीमेंट लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बैंगलोर के पंचाट (संदर्भ संख्या 48/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-12-2002 को प्राप्त हुआ था।

[सं. एल-29011/14/2000-आई.आर. (विविध)]

बी. एम. डेविड, अवर सचिव

New Delhi, the 3rd December, 2002

S. O. 15.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government here by publishes the award (Ref. No. 48/2000) of the Central Government Industrial Tribunal/Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Mysore Cements Ltd., and their workman, which was received by the Central Government on 2-12-2002.

[No. L-29011/14/2000-IR(M)]

B. M. DAVID, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT

"SHRAM SADAN,

III MAIN, III CROSS, II PHASE, TUMKUR ROAD,

YESHWANTHPUR, BANGALORE.

Dated: 22nd March, 2002

PRESENT

HON'BLE SHRI V.N. KULKARNI, B.COM. LLB.

PRESIDING OFFICER

CGIT-CUM-LABOUR COURT,

BANGALORE.

C.R. No. 48/2000

I PARTY	:	II PARTY
The Secretary Mysore Cements Employees Association, Tumkur District, Ammasandra-572211		The Chief Personnel Manager M/s Mysore Cements Ltd. Ammasandra-572211

AWARD

The Central Government by exercising the powers conferred by clause (d) of Sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-29011/14/2000 IR(M) dated 26th June 2000 for adjudication on the following schedule :

SCHEDULE

"Whether the claim of Mysore Cements Employment Association for payment of interest at the rate of 12% per annum on the delayed payment of bonus from 1-4-1998 to the date of payment is justified ? If not, to what relief the Association is entitled ?"

2. The first party workman was working with the management. Management was not justified in payment of interest on the delayed payment of bonous and therefore industrial dispute is raised.

3. Notices issued to parties. For the management counsel Shri B.C. Prahbakar has filed the vakalat.

4. It is seen from the records that from the beginning the workman is not attending this court. None was appeared for the first Party. The workman is not interested in the progress of this dispsute Accordingly I proceed to pass the following order.

ORDER

The reference is rejected.

(Dictated to PA transcribed by her corrected and signed by me on 22nd March, 2002)

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2002

का. आ. 16.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार राऊरकेला स्टील प्लांट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण भुवनेश्वर के पंचाट (संदर्भ संख्या 46/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-12-2002 को प्राप्त हुआ था।

[सं. एल-29012/18/98-आई.आर. (विविध)]

बी. एम. डेविड, अवर सचिव

New Delhi, the 3rd December, 2002

S. O. 16.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government here by publishes the award (Ref. No. 46/2001) of the Central Government Industrial Tribunal/

Bhubneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Rourkela Steel Plant and their workman, which was received by the Central Government on 2-12-2002.

[No. L-29012/18/98-IR(M)]

B. M. DAVID, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

PRESENT:

Shri S.K. Dhal, OSJS, (Sr. Branch), Presiding Officer, C.G.I.T.-cum-Labour Court, Bhubaneswar.

Tr. INDUSTRIAL DISPUTE CASE NO. 46/2001

Date of conclusion of hearing - 1st Nov. 2002

Date of Passing Award - 14th Nov. 2002

BETWEEN

The Management of the Managing Director, Rourkela Steel Plant, P.O. Rourkela, Sundargarh - 769 011. ... 1st Party Management

AND

Their Workmen, represented through The Secretary, Steel Employees Trade Union, A-49, Sector, 16, Rourkela, Sundargarh. ... 2nd Party Union

APPEARANCES:

Shri L.K. Nayak, Jr. Executive (Law). ... For the 1st Party-Management.

None. ... For the 2nd Party Union.

AWARD

The Government of India in the Ministry of Labour in exercise of Powers conferred by Clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No. L-29012/18/98/IR (M), dated 17.08.1998:

"Whether the action of the Management of Rourkela Steel Plant in reducing the basic pay of Shri Somra Oram from Rs. 2101/- to Rs. 1500/- without affording reasonable and fair opportunity is justified? If not, to what relief the workman is entitled?"

2. The case of the 2nd Party is that while he was working under the 1st Party-Management he was on leave in the month of June 1993 for 21 days, in the month of August 1993 for 01 day, in the month of September 1993 for 01 day and in the month of November 1993 for 05 days. He was charge-sheeted for unauthorized absence. He submitted his show cause. A departmental proceeding was initiated against him. Enquiry conducted by the Enquiry Officer was done without following the proper procedures and subsequently he was found guilty and his basic pay was reduced to Rs. 1500/- from Rs. 2101/. He raised the dispute, conciliation failed, so the present reference has been made on receipt of the Failure of conciliation report from the concerned Labour Commissioner. (Central).

3. The 1st Party-Management has filed their Written Statement wherein it was averred that, the 2nd Party joined in the year 1966. Thereafter he started remaining absent from his duty habitually without obtaining leave for which he was imposed with minor and major punishments on several occasions. He was also communicated with adverse entries made in his Character Confidential Roll for poor attendance. But inspite of that, the 2nd Party remained absent for 28 days in the year 1993 without any intimation. So, a departmental proceeding was initiated against him and charge sheet was submitted and he was asked to file show cause. Enquiry was conducted, the 2nd Party took part in the enquiry, thereafter he was found guilty and basing on the report of the Enquiry officer the punishment has been passed by the Disciplinary Authority. According to the 1st Party-Management the 2nd Party is not entitled for any relief.

4. On the above pleading of the parties, the following Issues have been settled.

1. Whether the reference is maintainable?
2. Whether the domestic enquiry conducted by the Management is fair and proper?
3. Whether the action of the Management in reducing the basic pay of the workman from Rs. 2101/- to Rs. 1500/- without affording reasonable and fair opportunity is justified?
4. If not, to what relief die workman is entitled?

5. Before hearing the 1st Party-Management had filed a petition to take up the Issue No. II as a preliminary Issue and after hearing of both the parties the application of the 1st Party-Management was allowed by the Tribunal and both the parties were given opportunities to place the materials in support of their case as regards Issue No. II is concerned. After hearing of both the parties, the Tribunal recorded a finding vide Order No. 40, dated 20.9.2002 that the domestic enquiry which was conducted by the 1st Party-Management against the 2nd Party was fair and proper. Thereafter both the parties were asked to adduce evidence in respect of other Issues. But the 2nd Party remained absent and did not place any evidence either oral or documentary in respect of Issue No. I, III and IV.

FINDINGS

ISSUE NO. I

6. This Issue has not been pressed. Hence, I can safely come to the conclusion that the reference is maintainable.

ISSUE NO. III

7. On receipt of the report from the Enquiry Officer, it is the Disciplinary Authority has imposed punishment reducing the basic pay to Rs. 1500/- from Rs. 2101/-. I do not find any compelling material to say that, the punishment is shocking and disprotionate to the misconduct committed by the 2nd Party. So there is no scope for this Tribunal to reduce the punishment as imposed against the 2nd Party. In the other words the action of the 1st Party-Management in reducing the basic pay of the 2nd party-Workman from Rs. 2101/- to Rs. 1500/- is reasonable and fair.

ISSUE NO. IV

8. In view of my findings given respect of Issue No. II and III the 2nd Party-Workman is not entitled for any relief.

9. Reference is answered accordingly.

Dictated & Corrected by me.

S. K. DHAL, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2002

का.आ. 17.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. मेकोन (इण्डिया) लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कोलकाता के पंचाट (संदर्भ संख्या 49/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02-12-2002 को प्राप्त हुआ था।

[सं० एल-29012/67/2000-आई. आर. (विविध)]

बी.एम. डेविड, अवर सचिव

New Delhi, the 3rd December, 2002

S.O. 17.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947) the Central Government hereby publishes the award (Ref. No. 49/2000) of the Central Government Industrial Tribunal, Kolkata now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. MECON (India) Ltd. and their workman, which was received by the Central Government on 02-12-2002.

[No. L-29012/67/2000-IR (M)]

B. M. DAVID, Under Secy.

ANNEXURE

THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 49 of 2000

Parties : Employers in relation to the management of M/s. MECON (India) Ltd.

AND

Their workmen

PRESENT :

Mr. Justice Bharat Prasad Sharma : Presiding Officer

APPEARANCE :

On behalf of Management : Mr. B.R. Dutta, Advocate.

State : West Bengal.

Industry : Engineering & Consultancy.

Dated, the 20th November, 2002

AWARD

By Order No. L-29012/67/2000/IR(M) dated 10-11-2000 the Central Government in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :—

"Whether the action of the management of M/s. MECON (India) Ltd. Ranchi (Bihar) in terminating the employment of Sh. Partha Biswas, Computer Assistant and Miss Mallika Talukdar, Steno-Typist employed in New Note Press Project, Salboni, Distt. Midnapore w.e.f. 1-6-1999 is justified? If not, to what relief is the workmen are entitled?"

2. The present dispute has been raised by two persons, namely, Shri Partha Biswas and Miss Mallika Talukdar claiming themselves to be ex-employees of M/s. Mecon (India) Ltd., Ranchi on account of their unjustified and illegal termination with effect from 1st of June, 1999 by the employer.

3. From the written statement filed on behalf of the workmen it appears that they were engaged as Computer Assistant and Steno-Typist by the management of Mecon (India) Ltd. with effect from 1st of March, 1992 and they were posted at Salboni Project of Reserve Bank of India in the Note Mudran Project. According to them they worked sincerely and efficiently for about 8 years and they had clean and meritorious record during their service, but all on a sudden in uncermonious manner their services were terminted by the employer with effect from 1st of June, 1999 in gross violation of the mandatory provisions of the industrial Disputes Act, 1947. It is further stated that on or about 1st of February, 1999 one Labour Enforcement Officer of Kharagpur had visited the office of the management at Salboni and had made some enquiry about the employees of the management and had noted the names of the workmen concerned who were employed there at the relevant time, but after the said inspection the management took a vindictive attitude and terminated the services of both of them without any observance of the provisions of the Industrial Disputes Act. It is also stated that after the said wrongful termination of service the workmen made several verbal and written representations to the management, but it did not have any effect. Thereafter, ultimately, they raised

a formal industrial dispute before the Regional Labour Commissioner (Central), Calcutta. It is also further stated that after receiving the representation of the workmen the Conciliation Officer convened several meetings to settle the dispute, but all efforts were in vain due to the adament attitude of the representatives of the management. It is also further stated that the action of the management in terminating their services amounted to 'retrenchment' within the meaning of Section 2 (oo) of the Industrial Disputes Act and since no retrenchment compensation or notice pay was paid as required under Section 25F of the Act, the action of the management become invalid and void in the eye of law. In the circumstance, the workmen have prayed that their termination be declated as illegal and unjustified and they may be granted relief of reinstatement with full back wages along with other incidental benefites.

4. A written statement has also been filed on behalf of the management. The written statement is in three parts. Whereas in Part-I the management has tried to challenge the maintainability of the reference, in Part-II it has dealt with the facts of the case and in Part-III the allegations made in the various paragraphs of the written statement of the workman have been denied and challenged. According to the management the order of reference is not maintainable, because it cannot be treated as industrial dispute as there was no relationship of employer and employee between the management and the workmen concerned and the reference has also been made without any specific mention of the provisions of the Act under which it has been made. But, at the outset it may be said that the objections raised on behalf of the management regarding maintainability of the reference are formal and there is no substance in it because the reference in question has been made by the competent authority, i.e., the Ministry of Labour, Government of India under the provisions of Section, Sub-section (1) clause (d) and Sub-section (2A) of the Industrial Disputes Act, 1947. So, far as the question of existence of relationship of employer and employee is concerned, it has to be decided whether such relationship existed between the parties or not. It has been stated on behalf of the management that the Company, i.e., M/s. Mecon (India) Ltd. ordinarily renders engineering and consultency services to the different organisations and in the present case they were rendering such services to the Reserve Bank of India in implementation of New Note Press Project at Salboni in West Bengal. The work was entrusted to Mecon (India) Ltd. through an agreement dated 17-01-1992 and the project was completed and the Press was finally commissioned on 12-02-2000. It is further stated that during the construction of the project the Company was required to post number of engineers and officers at Salboni for carrying out the project work and for this purpose some supporting staff required at the project office were locally engaged through contractors, namely, M/s. Himalaya Electrical and M/s. Roy Trading Corporation and such persons were posted at site. It is also stated that the requirement of the said persons was purely temporary till the completion of the project. It is also further stated that the Company had no sanctioned post, nor had any sanctioned vacancy of this kind and such vacancy was never notified to the Employment Exchange as required under rules. In this connection it is stated that this fact was admitted by the workman themselves before the Conciliation Officer as per report dated 11-06-1999. It is further stated that as per the statements recorded in the minutes dated 08-07-1999 of the Conciliation Officer, the workmen informed that the management of M/s. Mecon India Ltd. had given assurance to them that in case their names are forwarded through local Employment Exchange, they may be considered for permanent absorption and accordingly they had registered their names in the local Employment Exchange in 1993. It is stated that they also stated before the Conciliation Officer that their names were not forwarded by the Employment Exchange, but they had been rendering service to the management without any break and, therefore, they were entitled to be absorbed on permanent basis. It is stated that this kind of plea appears to be untenable because if the names of the workmen were not forwarded by the Employment Exchange, there was no question of their names being considered for making them permanent or regularising their services and the story regarding verbal assurance appears to be concocted and fabricated for their now benefit. It is stated that during the meeting with the Conciliation Officer it was clearly informed by the management that Mecon India Ltd. happens to be a Government of India Undertaking and it has its own rules and regulations of recruitment. It is stated that as per rules the management engages and employees labour by notifying the vacancy to the local Employment Exchange and since the work of Mecon India Ltd. at Salboni was for limited duration and for the project, it had deployed its own regular employees at site and some services were taken from other local organisations at Salboni for temporary project with clear understanding that on completion of the project work the services of the temporary workmen of the contractors will be terminated. It is also stated that Shri Partha Biswas and Miss. Mallicka Talukdar, i.e., the concerned workmen were never engaged by Mecon, but they were engaged through local contractors such as M/s. Roy Trading Corporation and M/s. Himalaya Electrical in connection with the construction of the project of the New Note Press of the Reserve Bank of India at Salboni. It is stated that on completion of the project the Company's stay at Salboni had ended and the contractors were instructed to withdraw the services of the supporting staff as their services were no more required. In this regard it has been stated that there was no likelyhood of any office being retained at Salboni after the completion of the project and the office was likely to be winded up. It is further stated that several employees engaged by the local contractors were removed by the contractors and they were

offerred legal dues as admissible under the law. Similarly, the two workmen concerned were also advised by Himalaya Electrical by different letters to collect their legal dues on submission of declaration by them, but they did not collect their legal dues for reasons best known to them. However, the other employees accepted their legal dues and furnished required receipts. In part-III of the written statement it has been stated that the statements made in paragraphs 1 to 3 are denied and it is asserted that the two workmen concerned were never appointed by the Company as claimed by them. It has also been stated that the two workmen were engaged through contractor in connection with the construction and commissioning work of the project of New Note Press of the Reserve Bank of India at Salboni. It is stated that the project was time-bound and on completion of the said project the requirement of staff and services of the contractors were gradually reduced and came to an end. It is stated that the two workmen concerned refused to collect their legal dues, though offerred, only on account of the fact that they were interested in pursuing the matter before the Tribunal by misrepresentation of facts in order to take benefit. Similarly, all other allegations made in the written statement of the workmen have been categorically denied and the Company has put the workmen to strict proof of the facts alleged in their written statement. It has also been stated that the two workmen concerned were appointed through contractor purely on contractual basis for a limited period and for the limited or specific purpose of project work and there was no question of their being retained in service after completion of the project. In this view of the matter, it has been stated on behalf of the management that the claim of the workmen is not fit to be accepted and they are not entitled to any relief whatsoever and accordingly it has been prayed that the reference be decided in favour of the management.

5. Both the parties adduced evidence, oral as well as documentary, in support of their respective claims. So far as the workmen are concerned, they have examined themselves as WW-1 and WW-2. WW-1 is Partha Biswas. He has stated that he was posted at Salboni Project in its New Note Press Project and he had joined on 01-03-1992 on the post of Computer Assistant. However, he has stated that his appointment was verbal and he was posted at the site of the project. He has further stated that his work was being supervised by the Chief Engineer and the Administrative Officer of the Mecon. He has stated that though the management was maintaining a register of attendance, he was not signing the same and has also stated that he was being paid on the basis of vouchers. It has been further stated by him that he has been removed from service with effect from 01-06-1999. He has further stated that he was occupying a quarter of Mecon for which he was paying rent and he has produced some rent receipts in this regard, marked Exts. W-1 to W-1/9. According to him in the quarters no other persons were residing than the workmen of Mecon. He has also stated that the Mecon used to provide conveyance from quarter to office and office to quarter. He has also denied that he was employed through Himalaya Electrical and not by Mecon. However, he has also stated that the time of his removal, he did not get any notice or any compensation. In his cross-examination, he has stated that he did not receive any letter for interview, nor did he get any appointment letter and he also did not get any letter of termination. According to him the survey of the project had started in 1991 and the project was completed in two phases. According to him the construction of phase one was done by one contractor and in the second phase, M/s. Gamon India was engaged for construction. He has also admitted that the Mecon India was overall incharge of the construction. It has been further stated by him in his cross examination that the contractors doing the job had their own men to perform the job. According to him originally there were 50 employees of Mecon and it was gradually reduced. According to him he was removed by one Mr. T.K. Banarjee the Site Incharge who was a Deputy General Manager. He was stated that they did not give any letter to him regarding his termination. However, he has expressed ignorance whether local persons were engaged in the project. However, he has admitted that he knows that Mecon happens to be a Government of India Organisation and he also does not know as to what are the procedure for appointment in such organisation. He has stated that as per the schedule the vehicle used to pick him up and his name used to mentioned in the Log Book also. So far as the quarter is concerned, he has admitted that there was no order of allotment in his favour and it has been suggested to him that he was accommodated in the quarter as he was working for Mecon on behalf of the contractor. However, he has also admitted that the quarter belonged to the Reserve Bank of India and not to the Mecon.

WW-2, Mallika Talukdar has stated that she was engaged as a Steno-typist on 01-03-1992 by Mecon India Ltd. and was posted at Salboni in the District of Midnapore in West Bengal. According to her, her service was terminated with effect from 01-06-1999 and during the period of her service sbe was working regularly. She has stated that she was neither handedover any appointment letter at the time of her engagement, nor any termination letter was handedover to her and she has also stated that she was working in the project, but has stated that the project was still continuing. According to her, as Steno-typist she used to sit in the office of Mecon under the Chief Engineer, Mr. S.K. Bakshi. She has also stated that she was provided transportation facility by Mecon to and from her office. She has further stated that at the time of retrenchment she was not served any notice and she was also not paid any compensation. She has denied the suggestion that she was not in the employment of Mecon; rather, she was employed through contractor. In her cross-examination, she has stated that at the time of her engagement she was told by the Administrative Officer that she was appointed

though she was not handed-over any appointment letter and she has also stated that at the time of termination also she did not received any termination letter and she was simply asked by the Chief Engineer that her services were no more required. She has stated that at Salboni New Note Press Project was under construction and it had started in 1991. She has also no knowledge whether after her termination any other person was appointed in her place. She has stated that the printing work in the note press had ended in the first phase in 1995 and the second phase had not started at the time of her termination. She has also further stated that there were several contractors engaged in the work under the management of Mecon and the contractors were assigned specific work for performance. She has stated that Mecon Engineer used to come to Salboni from Kharagpur where she used to reside and she used to accompany in the vehicle. She has also stated that some other Engineers were also travelling in that vehicle. She further stated that she was not issued any gate pass as she was going to office on vehicle. She has been suggested that none of the persons including herself was ever employed by Mecon and she has no knowledge whether the project was completed and the persons working there removed.

6. On behalf of the management also two witnesses have been examined. MW-1, Bala Chand Saha happens to be a Senior Personnel Officer of Mecon at Calcutta. He has stated that Mecon had entered into an agreement with the Reserve Bank of India for construction of New Note Press Project at Salboni. According to him there were two agreements dated 17-01-1992 and 23-01-1996 respectively. According to him the project was time-bound and it was completed on 31-10-1999. He has further stated that Mecon had not employed or engaged any worker for completion of the work of the project and the contractors, namely, Himalaya Electrical and other had supplied the work-force. He has also stated that the workers so employed were local persons. He also produced a chart prepared by him regarding the workmen engaged in the Mecon at different points of time and he has stated that the contractors used to submit bills for payment to the Mecon and Mecon used to make payment to the contractors and no direct payment was made to the workers by Mecon. He has also stated that bill regarding retrenchment compensation etc. of one Somnath Das was submitted to Mecon and it was paid to the contractor and contractor had paid the same to the person concerned. The papers in this regard have also been produced. In his cross examination, however, it has been suggested to him that some of the papers produced by him are concocted and manufactured, which he denied.

MW-2, Shri Harsh happens to be a Deputy General Manager of Mecon at Ranchi and he has stated that the execution work of the project of construction of New Note Press at Salboni was entrusted to Mecon India Ltd. by the Reserve Bank of India and there was an agreement to this effect. He has further stated that the project is now over and it was completed in October, 1999. He has further stated that Mecon had not made any recruitment of any staff for the purpose of construction of the project and for technical work, Mecon had shifted some staff from different branches of Mecon to the project and some non-technical staff were also deputed similarly. He further stated that for construction some contractors were engaged and prior to completion of the project the staff deputed by the Mecon were withdrawn in different instalments. He has further stated that Himalaya Electrical had written two letters to Mecon regarding their employees and action taken by them. These letters are Exts. M-1 and M-4. Apart from these, three other letters filed on behalf of the workmen themselves have been relied upon by the management and the same have been marked Ext. M-6, M-6/1 and M-6/2. The witness has further stated that for the purpose of entrance of the workers engaged by the contractors gate-passes were issued in their names and the same were forwarded to the General Manager of the Reserve Bank of India. The xerox copy of such letter is Ext. M-7. He has clearly stated that Mecon was only engaged by the Reserve Bank of India for the purpose of technical advice and supervision in the construction of the project. In his cross-examination, he has denied the suggestion that the two concerned workmen were the employees of Mecon.

7. So far as the documents are concerned, some documents have been admitted into evidence on behalf of the workmen. Ext. W-1 series are some bills submitted to the Mecon. These bills are for rent and electric charges. It is not going to help the workmen in any manner. Ext. W-2 is the xerox copy of the vehicle duty chart in which the names of the workmen find mentioned, but it has been explained on behalf of the management that because they were working with the Mecon in the project through contractor, for their facility the vehicles which were running were allowed to be accupied by these persons and that does not give them the status that they were the employees of the Mecon.

8. On the other hand, so far as the documents on behalf of the management are concerned, Ext. M-1 is the letter issued by the Himalaya Electrical to the two workmen informing them that they should collect their dues from them in the office of the Mecon at Salboni. Ext. M-2 is the agreement between the Reserve Bank of India and Mecon dated 17-01-1992 and in this agreement it has been clearly mentioned that the Mecon was assigned the task of rendering detailed engineering and consultency services for implementation of the New Note Press Project at Salboni and Mysore. Ext. M-2/1 is another agreement between Bharatiya Reserve Bank Note Mudran Ltd. and Mecon. By this agreement dated 23-01-1996 the period of operation of the Mecon in the project was extended Ext. M-3 is the chart which indicates that in the different years between 1992 to 2000 some persons were engaged in the Mecon at Salboni

project. The numbers have been fluctuating between the different months of the same year and between the different years and it appears that ultimately only 5 persons were shown to be working in the year 2001. This chart indicates that from 1997 onwards the strength started reducing considerably. It came down to 40 in January-March, 1998 and to 28 in October-December, 1998. Then it came down to 24 in January-March, 1999 and further came down to 17 in October-December, 1999. Then it was 13 in January-March, 2000 and was 6 in October-December, 2000. It indicates that as the project was heading towards completion, the work-force was being reduced. Ext. M-4 is a letter issued on behalf of the Himalaya Electrical to the two workmen for collecting their dues which is dated 28-02-2000. Ext. M-5 is the declaration said to have been handedover to the contractor, Himalaya Electrical by a workman, Somnath Das on 31-05-2000 stating that he had received his dues in full and the matter was finally settled. Ext. M-5/1 is the bill submitted to Mecon by Himalaya Electrical regarding the payments of dues to be made by the contractor. Ext. M-6 is a letter issued to the Labour Employment Officer, Government of India on 2nd June, 1999 in which it was stated that the workman, Partha Biswas was given verbal assurance by the officers of the Mecon that his service will be regularised if the Employment Exchange forwards his name on his being registered and he had made a prayer for his being allowed to be regularised. Similar letter of another workman, Mallika Talukdar is Ext. M-6/1. Ext. M-6/2 is the letter issued on behalf of the two workmen to the Assistant Labour Commissioner(C), Calcutta giving out their version of the matter in the dispute under conciliation. Ext. M-7 is the letter purported to have been issued by the Executive Officer of Mecon to the General Manager, Reserve Bank of India in which it was stated that some workmen were engaged by the Mecon through contractors. M/s. Roy Trading and M/s. Himalaya Electrical for completion of the project and the names of the two workmen find place in it. No other paper has been admitted into evidence, though some other papers were also filed. It is significant to note that the papers Ext. M-6 series and Ext. M-7 are the papers which were filed on behalf of the workmen, but have been relied upon by the management.

8. In course of argument it was submitted on behalf of the workmen that the management has failed to produce any paper to show that Mecon had engaged some persons through contractors, but it is obvious that several papers have been filed which are admitted into evidence also to show that there was some transaction between Mecon and Himalaya Electrical, one of the contractors. It is clear from the evidence that the services of Mecon were requisitioned by the Reserve Bank of India for engineering and technical advice in the completion of project of New Note Press at Salboni and from the evidence it also appears that some officers and staff of Mecon were shifted to Salboni for working in the project. It is obvious that at Salboni neither there was any question of any permanent establishment of Mecon, nor the work of Mecon was likely to continue for ever, because the engagement of Mecon was only for completion of the project which was of the Reserve Bank of India. It has been submitted on behalf of the workmen that no paper has been filed to show that Mecon had either any licence to engage labourers for doing some job or that those alleged contractors had any licence for engaging such labourers, which is in contravention of the provisions of the Contract Labour (Abolition and Regulation) Act and, therefore, the plea of the management should not be accepted. In this regard the witnesses examined on behalf of the management have failed to say anything and it has to be borne in mind that in all cases the particular provisions of the Contract Labour (Abolition and Regulation) Act do not apply and its application depends upon the notification made by the Government of India under Section 10 of the said Act. Here is the instance of these two persons being engaged only for the purpose of operating the computer of the Company and for doing some typing work. Because the management had to get some work done for which a regular employee was not required, they appeared to have engaged some persons locally through some contractors and those persons were working for the Mecon, no doubt, but they were not directly appointed or engaged by the Mecon. There is no evidence to show that they were either issued any appointment letter by the Mecon or that their attendance was being maintained or that salary or wages were being paid by the Mecon directly; rather, it appears that some bills were being presented by the Himalaya Electrical and the same were being paid to them by the Mecon.

9. So far as occupying a quarter by one of the workmen, WW-1, Partha Biswas is concerned, he has stated that no allotment letter was issued against his name and he has also admitted that the quarter belonged to the Reserve Bank of India. It is, therefore, obvious that because he was working there, he was allowed to occupy a quarter of the Reserve Bank of India, which was available. It does not create any relationship of employer and employee between Mecon and these workmen by any means. Similarly, he was allowed to travel in a vehicle in which other persons were travelling to the office and this facility was provided to him because he was working in the organisation. Similar was the case with the another workman, Mallika Talukdar who has clearly stated that she was going to office from Kharagpur from where some engineers used to travel in a vehicle and she was allowed to travel in it. Because she was allowed to travel in an official vehicle to and from the work place, it cannot be an evidence to create a relationship of employer and employee between Mecon and these workmen. There is no other material to show that the two workmen had direct concern with Mecon, though it has not been denied that they had been working in the office of the Mecon in a project. It is also very clear that the purpose of engagement of these

two persons was for giving support to the work being performed by the officers of the Mecon in New Note Press Project of the Reserve Bank of India. If a person is engaged in a project, then he is supposed to know that as soon as the project is complete, his requirement will no more exist and he shall have to leave the job and if with this understanding one joins the job, then he cannot have any grudge against the termination of his service on completion of the project.

10. In this connection, some decisions of the Apex Court and the Hon'ble High Court have also been cited on behalf of the management. It has been pointed out that in the case of Delhi Development Horticulture Employees' Union v. Delhi Administration [1993 (83) F.J.R. 148 SC] their Lordships have held "For regularisation there must be regular and permanent posts or it must be established that although the work is of regular and permanent nature, the device of appointment and keeping the workers on ad hoc or temporary basis has been resorted to, to deny them the legitimate benefits of permanent employment". It has been pointed out that in the present case it is clear that neither the work was permanent, nor the requirement was of permanent nature and on this principle they could not have been regularised in service merely because they had rendered service for some considerable period of time.

In the case of Telecom District Manager v. A.A. Anjali and Ors. (2000 L.L.R. 1219) their Lordships of the Karnataka High Court have hold that non-providing of work to a workman on completion of a project does not amount to retrenchment as defined under Section 2(00) of the Act. This observation of their Lordships was based on the observation of their Lordships of the Hon'ble Supreme Court in the case of Gaziabad Development Authority v. Vikram Chaudhary [1995(5) S.C.C. 210] where their Lordships observed "On completion of the existing projects in which the respondents are working, if the appellant undertaks any fresh project, instead of taking the services of fresh hand at the place of the new project, the appellant needs to take the services of the existing temporary daily wage respondents. In the event of the appellant not having any project on hand, the obligation to pay daily wages to the respondents does not arise."

In the case of Bhamumati Tapubhai Muliya v. State of Gujarat (1996 Lab. I.C. 885) it has been observed by their Lordships of the Hon'ble Gujarat High Court that "the appellant sought regularisation of her services and it was observed by the Supreme Court that eligibility and continuous working for howsoever long periods should not be permitted to over reach the law. The appellant was held not entitled to claim regularisation even though she had worked without break for 9 years."

11. It has been submitted on behalf of the management that so far as the requirement of compliance of the various provisions of the Contract Labour (Abolition and Regulation) Act are concerned, it has been held by their Lordships of the Hon'ble Supreme Court in the case of Dina Nath v. National Fertiliser Ltd. [1992 (80) F.J.R. 191 SC] "as can be seen from the scheme of the Act, it merely regulates the employment of contract labour in certain establishments and provides for its abolition in certain circumstances. The Act does not provide for total abolition of contract labour but it provides for abolition by the appropriate Government in appropriate cases under Section 10 of the Act.". So, merely because there are some provisions under Sections 10 and 12 of the said Act, it cannot be said that the registration and licence under those sections were mandatory in the present case. In this view of the matter, it has been submitted on behalf of the management that there is no case made out on behalf of the workman that they had vested right in getting their services retained by the Mecon or their services being regularised and they are being permanently absorbed by Mecon, because they assisted the staff of the Mecon in completion of the project assigned to it by the Reserve Bank of India.

12. I find substance in the contention of the learned Advocate for the management. This is not a case in which the workmen had any right or that the management had any obligation to allow them to continue in service or to regularise them. So far as the payment of their dues and compensation are concerned, they were offerred the same by the contractor who was entitled to get it reimbursed by Mecon, but instead of their offerring and it appears that inspite of instruction to this effect from the Conciliation Officer, the workmen chose not to receive the same. Therefore, the workmen do not appear to be entitled to any kind of relief sought by them. Their termination also cannot be treated as 'retrenchment' under Section 2(00) of the Industrial disputes Act as it appears to be covered under clause (bb) of Section 2(00) of the Act. The termination of the concerned workmen, therefore, cannot be treated as illegal or unjustified.

The reference is accordingly decided and disposed of.

B.P. SHARMA, Presiding Officer

Dated, Kolkata,
The 20th November, 2002

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नई दिल्ली, 3 दिसम्बर, 2002

का.आ. 18.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इण्डियन ऑयल कार्पो. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कोलकत्ता के पंचाट (संदर्भ संख्या 20/2002) को प्रकाशित

करती है, जो केन्द्रीय सरकार को 02-12-2002 को प्राप्त हुआ था।

[सं० एल-30011/26/2002-आई. आर.(विविध)]

बी. एम. डेविड, अवर सचिव

New Delhi, the 3rd December, 2002

S.O. 18.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the award (Ref. No. 20/2002) of the Central Government Industrial Tribunal, Kolkata now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Oil Corpn. Ltd. and their workman, which was received by the Central Government on 02-12-2002.

[No. L-30011/26/2002-IR (M)]

B. M. DAVID, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 20 of 2002

Parties: Employers in relation to the management of Indian Oil Corporation (Marketing Division)

AND

Their Workmen

PRESENT:

Mr. Justice Bharat Prasad Sharma .....Presiding Officer

APPEARANCE:

On behalf of Management:

Mr. S. Sathiavageeswaran, Chief Industrial Relations Manager with Mr. N. C. Sinha, Senior Manager (Industrial Relations)

On behalf of Workmen :

None

State : West Bengal.

Industry : Petroleum.

Dated 21st November, 2002.

AWARD

By Order No. L-3011/26/2002 IR(M) dated 29-08-2002 the Central Government in exercise of its powers under Sections 10(l) (d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the demand of the workmen represented by Indian Oil Employees Union (Eastern Branch) that stagnation increments for Grade VI employees of Indian Oil Corpn. (Marketing Division) Eastern Zone should not be limited to 3, is justified? If so, to what relief are the workmen concerned entitled ?"

2. Then the case is called out today, none appears for the union, nor any step is taken on its behalf for contesting the matter, although the management is represented by its representatives. However, it appears that a letter dated 08-11-2002 from the union concerned was received in the office in which the union stated that the issue referred in the present case is infractuous and prayed for necessary order in the matter.

3. Since the union concerned stated that the issue under reference has become infractuous, it is clearly a case of no dispute. The present reference is accordingly disposed of by passing a "No dispute" Award.

B. P. SHARMA, Presiding Officer

Dated, Kolkata the 21st November, 2002.

नई दिल्ली, 16 दिसम्बर, 2002

का.आ. 19.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. जे. एन. दीक्षित कान्ट्रेक्टर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण भुवनेश्वर के पंचाट (संदर्भ संख्या 379/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-12-2002 को प्राप्त हुआ था।

[सं० एल-26011/8/96-आई. आर.(विविध)]

बी. एम. डेविड, अवर सचिव

New Delhi, the 16th December, 2002

S.O. 19.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the award (Ref. No. 379/2001) of the Central Government Industrial Tribunal, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. J. N. Sharma Contractor and their workman, which was received by the Central Government on 10-12-2002.

[No. L-26011/8/96-IR (M)]

B. M. DAVID, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

PRESENT:

Shri S.K. Dhal, OSJS, (Sr. Branch),
Presiding Officer, C.G.I.T.-cum-Labour Court,
Bhubaneswar.

Tr. INDUSTRIAL DISPUTE CASE No. 379/2001
Date of conclusion of hearing—21st November 2002.

Date of Passing Award 27th November 2002

BETWEEN:

The Management of (1) M/s. J.N. Sharma, Contractor, Bolani Ores Mines, RMD, SAIL, P.O. Bolani, Distt. Keonjhar.

2. M/s. Lakha Singh, Contractor, Bolani Ores Mines, RMD, SAIL, P. O. Bolani, Distt. Keonjhar.
3. The Dy. General Manager, Bolani Ores Mines, RMD, SAIL, P.O. Bolani, Distt. Keonjhar.

... 1st. Party-Managements.

AND

Their Workmen represented through the President, Keonjhar Mines Workers Union, P.O. Bolani, Distt. Keonjhar. ... 2nd Party-Union.

APPEARANCES:

Shri R.C. Tripathy,

Asstt. Chief Law Officer	... For the 1st. Party-Management No. 3
None	... For the 1st. Party-Management 1 & 2.
None	... For the 2nd Party-Union.

AWARD

The Government of India in the Ministry of Labour in exercise of Powers conferred by Clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No. L-26011/8/96-IR (Misc.), dated 27-12-1996 :

"Whether the demand of the Keonjhar Mining Workers Union, to regularize the contractors workmen engaged through M/s. J.N. Sharma, Contractor by M/s. Lakha Singh in Sweeper and Canteen jobs and to pay V.D.A. at par with the regular workmen by the Management of Bolani Ores Mines, Raw Materials Division, SAIL, Distt. Keonjhar, is justified? If so, to what relief the workmen are entitled?"

2. The case of the 2nd Party is that in absence of regular workers, contractor workers are working under the 1st Party-Management. This practice continued since 1987. The 1st Party-Management No. 3 (Bolani Ores Mines RMD, SAIL) have effected the Provident Fund Scheme in respect of some contractor workers and discriminated some others without any reason. Moreover higher rate of V.D.A. is being paid to regular workers with effect from 1-1-1992 and that allowance is not paid to the contract workers. This violates the provision of Section 25(2)(V)(A) of CLR and A Rules, 1970. The contract workers have discharged continuous and uninterrupted service but they have been discriminated from the regular employees in the matter of financial benefits. The 1st Party-Management. No. 3 (Bolani Ores Mines RMD, SAIL) is procuring Labourers from Management No. 1 and 2 who are the contractors. Demand was made to regularize the contract workers and for payment of V.D.A. at par with regular workmen. It was not accepted. So, the dispute was raised after failure of conciliation the reference has been made. Prayer has been made for regularization of contract workers and to give financial benefits at par with regular workers.

3. The 1st Party-Management has filed their Written Statement in which stand has been taken that, the reference is a vague as it does not refer to any particular workman or workmen. The second stand that has been taken by the 1st Party-Management is that none of the persons employed by the contractors are the members of the sponsoring Union. So, the Union has got no locostandy to represent the workmen. Further stand of the 1st Party Management No. 3 that, there exists no relationship of employer and employee between the 1st Party-Management and the members of the 2nd Party-Union. So, there can be no Industrial Dispute between the parties. As regards the payment of V.D.A. It is submitted that, the Tribunal has got no jurisdiction to decide the payment of V.D.A. in view of the fact that such dispute can be decided only by the Chief Labour Commissioner. While denying all the allegations made by the 2nd Party, the 1st Party-Management has prayed for answering the reference in their favour but not in favour of the 2nd Party.

4. On the above pleading of the parties, the following Issues have been settled.

1. Whether the reference is maintainable?
2. Whether the demand of the Keonjhar Mining Workers Union to regularize the contractors workmen engaged through M/s. J.N. Sharma, Contractor and M/s. Lakha Singh in Sweeper and Canteen jobs and to pay V.D.A. at par with the regular workmen by the Management of Bolani Ores Mines, Raw Materials Division, SAIL, Distt. Keonjhar is justified?
3. If so, to what relief the workmen are entitled?

5. It may be stated here that after settlement of Issues when the case was adjourned for hearing, the 2nd Party have not taken any step. They have not adduced any oral or documentary evidence.

FINDINGS

ISSUE NO. I

6. This Issue has not been pressed. So, this Tribunal can safely come to the conclusion that, the reference is maintainable.

ISSUE NO. II

7. The dispute has been raised by the 2nd Party-Union regarding regularization of contract workers engaged through Contractor, namely M/s. J. N. Sharma and M/s. Lakha Singh as Sweeper and Canteen jobs and for payment of V. D.A. at par with regular workmen of the 1st. Party-Management. For regularization a person claiming for the same is required to establish that he was engaged by the 1st Party-Management and he has worked for more than 240 days in a calendar year and that the post is lying vacant and that he has got qualification for the said post. As regards payment of V.D.A. the 2nd Party also has required to prove that the contract workers are doing the same work, which are being done by the regular employees who are receiving the V.D.A. In this case no materials have been placed by the 2nd Party-Union before this Tribunal. So, in absence of any materials to that effect it can not be said that the demand of the 2nd Party for regularization of the Workmen and for payment of V.D.A. is justified. This Issue is answered accordingly.

ISSUE No. III

8. In view of my findings given in respect of Issue No. II the members of the 2nd Party-union are not entitled for any relief.

9. Reference is answered accordingly.

Dictated & Corrected by me.

S. K. DHAL, Presiding Officer

नई दिल्ली, 16 दिसम्बर, 2002

का. आ. 20.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बोलानी ओरस माइन्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण भुवनेश्वर के पंचाट (संदर्भ संख्या 405/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-12-2002 को प्राप्त हुआ था।

[सं० एल-29011/28/2001-आई. आर.(विविध)]

बी. एम. डेविड, अवर सचिव

New Delhi, the 16th December, 2002

S.O. 20.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947) the Central Government hereby publishes the award (Ref. No. 405/2001) of the Central Government Industrial Tribunal, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bolani Ores Mines and their workman, which was received by the Central Government on 10-12-2002.

[No. L-29011/28/2001-IR (M)]

B. M. DAVID, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

PRESENT:

Shri S.K. Dhal, OSJS, (Sr. Branch), Presiding Officer, C.G.I.T.-cum-Labour Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 405/2001

Date of conclusion of hearing 21st Nov. 2002

Date of Passing Award -26th Nov. 2002

BETWEEN:

The Management of the Deputy General Manager, Bolani Ores Mines, RMD, SAIL, P.O. Bolani, Dist. Keonjhar - 758 037. ... 1st. Party-Management

AND

Their Workmen represented through the General Secretary, Keonjhar Mining Workers Union, Qr. No. G/107, Bolani, P.O. Bolani, Dist. Keonjhar. ... 2nd Party-Union

APPEARANCES:

Shri R. C. Tripathy, Asstt. Chief Law Officer ... For the 1st. Party-Management

None ... For the 2nd Party-Union

AWARD

The Government of India in the Ministry of Labour in exercise of Powers conferred by Clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No. L-29011/28/2001/IR (M), dated 18.06.2001:

> "Whether the action of the management of Bolani Ores Mines Raw Material Division, SAIL, P.O. Bolani, Dist. Keonjhar, not confiming the workmen (list enclosed) on due date i.e. after six months as per standing order and also not promoting the workmen as per cluster in due time after the completion of the probation time as per the standing orders, is justified ? If not, to what relief is the workman entitled?"

2. The case of the 2nd Party who were represented through the Union is that 15 workers working under the 1st Party-Management have not been confimed though they have worked for more than three years violating the instructions of the standing order. Their further case is that the 1st Party-Management also has not promoted fifteen workmen as per the cluster in due time after the

completion of probation time as per the standing order. So, they raised the dispute by sending different represented on from 17-5-1999 to 31-8-2000. Conciliation was made but the 1st Party-Management refused to fulfill the demand of the Union for which a failure report was submitted. Thereafter the persent reference has been made. The 2nd Party prayed for confimation and promotion from retrospective effect in respect of fifteen workmen as per the list as per Clause 3(1) of the Standing order with consequential monetary benefits.

3. The 1st Party-Management has filed their Written Statement. They have taken the stand and the reference is not maintainable. Their case is that, the fifteen workmen appearing in the list joined in service on 14-8-1997 and 2-7-1998. According to the terms of the conditions they are to be confimed after one year. The 1st Party-Management has taken the stand that the claim for promotion is not maintainable, as the reference does not indicate the due date for promotion. According to the 1st Party-Management as per non-executive promotion policy introduced in the company as per the memorandum of settlement dated 29-7-1988 for the purpose of carrier growth, the non-Executive scales of pay has been clubbed into clusters and rules have been framed for promotion within and/or between the clusters. On completion of five years service in a grade/scale, which is at present four years subject to the parameterts prescribed, an employee is eligible to be considered for promotion to next higher grade with the cluster. All the fifteen workmen appearing in the schedule of reference have been confimed in the grades on completion of one year service in confinity with the offer of appointment. Similarly, all the workmen excepting Shri A. Desai and L. Munda have been promoted to the next higher grade within the cluster with effect from 31-12-2001 on completion of 4 years in the grade. The promotion of Shri A. Desai and Shri L. Munda has not been effect due to their poor performance. The 1st Party-Management has claimed that the 2nd Party-Union has got no grievance. Hence, the reference may be answered in favour of them.

4. On the above pleading of the parties, the following Issues have been settled.

1. Whether the reference is maintainable ?
2. "Whether the action of the management of Bolani Ores Mines Raw Material Division, SAIL, P.O. Bolani, Dist. Keonjhar, not confiming the workmen as per the list on due date i.e. after six months as per standing order is justified ?
3. Whether the action of the Management in not promoting the workmen as per cluster in due time after the completion of the probation time as per the standing orders is justified ?
4. If not to what relief the workmen are entitled ?

FINDINGS

ISSUE No. 1

5. This Issues has not been pressed. So, this Tribunal can safely come to the conclusion that, the reference is maintainable.

ISSUE No. II & III

6. I have taken these two issues for convenient sake, as they are inter-related to each other. It may be stated here that, 2nd party has not adduced any oral documentary evidence in support of their case regarding promotion and confimation. When the dispute has been raised at their instance the on us lies on the 2nd party Union to place the materials before the Tribunal in support of their claim. But that has not been done in this case. On the other hand, the documents exihibited in this case on behalf of the 1st Party-Management i.e. Ext.-A to E supports the stand of the 1st Party-Management. So, there is no other alternative for the Tribunal but to say that the action of the 1st Party-Management not confiming the six workmen and not promiting the workmen as per the standing orders are not justified. Hence, these two issues are accordingly.

ISSUE No. 1V

7. In view of my findings given in respect of Issue No. II and III the members of the 2nd Party-Workmen are not entitled for any relief.

8. Reference is answered accordingly.

Dictated & Corrected by me.

S. K. DHAL, Presiding Officer

नई दिल्ली, 16 दिसम्बर, 2002

का. आ. 21.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बॉमर लॉरी एण्ड क. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 54/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-12-2002 को प्राप्त हुआ था।

[सं. एल-30012/156/2000-आई.आर. (विविध)]

बी. एम. डेविड, अवर सचिव

New Delhi, the 16th December, 2002

S.O. 21.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 54/2001) of the Central Government Industrial Tribunal Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Balmer Lawrie & Co. Ltd. and their workman, which was received by the Central Government on 20-11-2002.

[No. L-30012/156/2000-IR(M)]

B. M. DAVID, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT

RUDRESH KUMAR

PRESIDING OFFICER

I.D. No. 54/2001

Ref. No. L-30012/156/2000/IR(M) Dated : 9-3-2001

BETWEEN

Rajveer Singh Solanki, Rashtriya Chariman/President, Restriya Mazdoor Congress (INTUC), 80, Lawries Complex, Chowkha, Namner, Agra.

(espousing cause of Brij Kishor Sharma & Man Singh)

AND

The General Manager, M/s Balmer Lawrie & Co. Ltd., Mathrua. (U.P.)

AWARD

By order No. L-30012/156/2000/IR(M) Dated: 9-3-2001, the Central Government in the Ministry of Labour, in exercise of powers conferred by clause (d) of sub section (1) and section 2(A) of section 10 of the Industrial Dsputes Act, 1947 (14 of 1947) referred this industrial dispute between Rajveer Singh Solanki, Rashtriaya Chariman/ President, Rastriya Mazdoor Congress (INTUC), 80 Lawrie Complex, Chowkha, Namner, Agra (espousing cause of Brij Kishore Sharma & Man Singh) and The General Manager, M/s Baler Lawrie & co. Ltd. Mathrua. (U.P.) for adjudication.

The reference under adjudication is as under :

"क्या जनरल मैनेजर मैसर्स बॉमर लॉरी एण्ड कम्पनी लि. मथुरा द्वारा कर्मकार श्री ब्रज किशोर शर्मा और श्री मानसिंह को निलम्बन अवधि का सम्पूर्ण वेतन न देना न्यायोचित् है ? यदि नहीं, तो सम्बधित कर्मकार किस अनुतोष के हकदार हैं ?

2. The dispute is confined to the wages for the period of suspension, which is from 6-2-98 to 19-2-99. according to the management the workmen, Brij Kishore sharma and Man Singh were found guilty in a domestic enquirey and wer punished by order dated 2-2-98. They were demoted to immediaste lower grade, and were denied wages for the suspension period.

3. During the coures of discussion in Lok Adalat, the parties were advised to reconcile their differences Both the parties viz. the management of M/s Balmer Lawrie & company Limited and Rajveer Singh Solanki, Mandal Adyaksh, Rashtriya Mazdoor Congress (INTUC), agreed to resolve their disputes. They settled the dispute and submitted a copy of settlement. According to the terms of the settlement , the management company revoked order of supspension and demotion and released all benefit including differnce of wages effective from 6-2-98 to 19-2-99 as well as the other benefits to the workmen. The workmen also southt and were permitted to avail voluntary retirement under tthe Voluntary Retirement Scheme of the company. Their entitlements were also noted enumerated inthe terms of the settlement. the workmen agreed to withdraw the present dispute No. 54/2001 and all other disputes and complaints.

Two separate applications have been filed before this Tribunal along with copy of the settlement acompanied with seprate affidavits of the workman viz.Briz Kishore Sharma and Man Singh. Mr. Rajveer Singh Solanki for the workman and Mr.B.P. Joshi, Manager Operations for the management appeared before this Tribunal on 21-11-2002 and verified the terms of the settlement.

5. Mr. B.P. Joshi also field photo copy of cheque payment vouchers showing payment of Rs.90889.50 to Man Singh and Rs.98140.01 to Brij Kishore towards full and final payment of the dues. These payments vouchers were also verified by the parties.

6. In view of the setlement arrived between the parties, it is no loger open to go into the merit of the Dispute. The dispute is adjudicated in terms of the settlement arrived between the parties. The settlement is made part of this award.

7. Thus, the refrence is adjudicated in terms of the settlement forming part of this award. The workman have already received cheques and so are not entitled to any other pecuniary benefit from the management.

8. Award as above.

LUCKNOW

26.11.2002

RUDRESH KUMAR, Presiding Officer.

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

Annexure of Award dated 26-11-2002 in I.D. No. 54/2001, between Rajveer R Singh Solanki, Rastriya Chairman/President, INTUC, Agra & The General Manager, M/S Balmer Lawrie & Co.Ltd.,Mathura.

Form-H

MEMORANDUM OF SETTLEMENT

Name of Parties:

1. M/S Balmer Lawrie &Co Ltd.
   containers Division, Mathura.

   Representative of Management

   a) Shri B.P. Joshi, Manager (opn)

   b) Shri M.Khare, Manager (A&F)

   c) Shri J.K. Verma, Sr.Officer (c)

   d) Shri M.Lal, Officer (Prodn)

2. Shri Rajveer Singh Solanki
   Mandal Adhyaksh
   Rashtriya Mazdoor Congress (INTUC)
   C/O Lawries Hotel
   Pratap Pura, AGRA.

CONCERNED WORKMEN

(a) Shri Brij Kishore Sharma

(b) Shri Man Singh

SHORT RECITAL OF THE CASE

S/Shri Brij Kishore Sharma, S/O Sh. Ram Sahay, T.No.C-1033, Shri Man Singh S/O Shri Daulat Ram, T.No.C-1089, indulged in group clash on 5-2-1997. As a consequence of which, they were placed under suspension pending domestic enquiry from 6-2-1997 to 8-2-1999. on the basis of findings, vide order dated 2-2-1999. they were demoted to immediate lower grade from 9-2-1999.

Being aggrieved by the order of punishment and demotion, on behalf above named workmen, Shri Rajeev Singh Solanki, Mandal Adhyaksh, Rashtriya Mazdoor Congress, Agra, (affiliated to INTUC) raised an industrial dispute No.54/2001 which is understood to be pending before the Honourable Preseding Officer of the Central Government Industrial Tribunal cum Labour Court, Lucknow, for recovery of wages of suspension period.

The management Company, with a view to retionalize the manpower in the un-viable businesses of the Company and at the same time providing for a "safety net", introuced a voluntary retirement scheme. This scheme was circulated to all the employees vide circular Ref: CHRD&C/VRS dt. 3-8-2002. Employees who are allowed to retire voluntarily under the scheme are eligible for ex-gratia payment at the rate of two months salary for every completed year of service or part thereof or salary for the balance period of service. They are also eligible for notice pay, encashment of leave, gratuity etc as per rules of the company.

RUDRESH KUMAR, Presiding Officer

In the context of the above scheme, the above named workmen, have approached the Company and appealed to consider sympathetically for withdraw of suspention and demotion and providing all benefits of above suspention period and demotion, to those who opt to seprate under the scheme, as a gesture of goodwill.

After several rounds of discussions, both the parties have to come to a settlement as set out in this memorandum.

TERMS OF SETTLEMENT

1. The Management Company shall revoke its order of suspension and demotion, and shall release all the benefits including differential wages, for suspension period effective 6-2-1997 to 8-2-1999, as well as the benefits including differential wages,due from the date of demotion i.e.9-2-1999 to the workmen who were placed under suspention from 6-2-1997 to 8-2-1999 and were demoted to immediate lower grade from 9-2-1999, in the case of the workman of containers Division, Mathura, Who opt to seprate under the scheme. The benefits would be released on full and final settlement, without going into the merits and demerits of dispute. The concerned workman would be eligble for (a) full wages,i.e. basic pay, FDA, VDA, for the suspension period after adjusting the payment already made, as subsistance allowance during the period of suspension (b) difference of the wages on account of demotion (c) benefits i.e. shift allowance, tiffin and attendance incentive (d) production incentive (e) Earned leave (f) Sick leave (g) Contributory PF and other statutory benefits (h) differential bonus.

2. The workman, namely Shri Brij Kishore Sharma & Shri Man Singh, hereby agree that as they opted to seprate availing the benefits of the scheme shall withdraw dispute No. 54/2001, for recovery of wages of suspension period and demotion, alleged to be due to them from the Company for the period 6-2-1997 to 8-2-1999 and from the date of demotion i.e. 9-2-1999, and any other claim/petitions filed by them individually or through Union, under any Section of ID Act, 1947, before the Central Government Industrial Tribunal-Cum-Labour Court, Lucknow. For the purpose, it is hereby agreed that the Company may file this settlement before the Honourable Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Lucknow or before any other authority, as and when they take cognizance of the complaints pertaining to the above matter.

3. The Workmen hereby agree to withdrawal all dispute/claims/complaints either filed by themselves or through any other union, and pending Lucknow, before the Tribunal/Labour/Conciliation Authority.

4. It is further agreed that after this settlement, there remain no dispute/grievance between the parties. All the disputes and differences stand fully and finally resolved by this agreement. The workmen opting to separate under the schema shall not claim, or be entitled to, any benefit of future settlements or award.

5. It is also understood and agreed that those workmen who separate under the voluntary retirement scheme shall not authorize/allow any other person/union or any forum to raise any dispute or file any petition against the Company before any Tribunal/Labour Court/ Conciliation . Authority, in respect, of the above dispute.

Signatures of the Parties

SIGNATURES OF CONCERNED WORKMEN

(A) Shri Brij Kishore Sharma

(b) Shri Man Singh

Representative of Management

(a) Shri B P Joshi, Manager

b) Shri M. Khare, Manager

(c) Shri J K Verma, Sr.Officer(C)

(d) Shri M. Lal, Officer (Prodn)

Witness : 1.

2.

RUDRESH KUMAR, Presiding Officer

नई दिल्ली, 16 दिसम्बर, 2002

का. आ. 22.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उदयपुर मिनरल एण्ड डवलपमेंट सिंडीकेट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायाल भीलवाड़ा के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-12-2002 को प्राप्त हुआ था।

[सं. एल-29012/85/99-आई.आर. (विविध)]

बी. एम. डेविड, अवर सचिव

New Delhi, the 16th December, 2002

S.O. 22.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Bhilwara as shown in the Annexure in the Industrial Dispute between the employees in relation to the management Udaipur Mineral & Development Syndicate and their workman, which was received by the Central Government on 10-12-2002

[No. L-29012/85/99-IR(M)]

B. M. DAVID, Under Secy

अनुबन्ध

औधोगिक न्यायाधिकरण एवं श्रम न्यायालय, भीलवाड़ा

कैंप - गुलाबपुरा

औद्योगिक विवाद प्रकरण संख्या 58/99

विवाद मध्य:-

श्री देवकरण पुत्र उदा गुजर निवासी-लाडीजी का खेड़ा, तहसील-जहाजपुर, जिला-भीलवाड़ा—प्रार्थी/श्रमिक

एवं

प्रबन्धक मै. उदयपुर मिनरल एण्ड डवलपमेन्ट सिंडीकेट, प्रा.लि. भीलवाड़ा —विपक्षी/नियोजक

उपस्थित :

(श्री महेश चन्द्र पुरोहित, न्यायाधीश, आर.एच.जे.एस.)

प्रार्थी की ओर से : श्री एस.एन. शार्मा, प्रतिनिधि

विपक्षी की ओर से : श्री नेमीचन्द जैन, प्रतिनिधि

पंचाट दिनांक 30-10-2002

भारत सरकार के श्रम मन्त्रालय की ओर से निम्न विवाद इस न्यायाधिकरण को न्याय निर्णयन हेतु प्रेपित किया गया :-

"Whether the action of the Agent M/s. Udaipur Mineral Development Syndicate Pvt. Ltd. Bhilwara by not giving Gr. Rs. 750-25-1000-30-1475 to Shri Devkaran Gujar S/o Shri. Uda Gujar and Shri Devkaran S/o Shri Kana Gujar w.e.f. 31-5-1998 is legal and Justified ? If not to what relief the concerned workmen are entitled?"

आज पक्षकारान के प्रतिनिधि उपस्थित/पूर्व में इस प्रकरण में देवकरण आत्मज काना का दिनांक 10-11-2000 को कोई विवाद नहीं रहा आशय का पंचाट इस न्यायालय द्वारा पारित किया जा चुका है। शेष प्रार्थी ने दिनांक 7-6-2002 को लोक अदालत की भावना से इस प्रकरण में अब कोई कार्यवाही नहीं चाहने की दरख्वास्त पेश की। चूंकि पक्षकारान के मध्य अब इस प्रकरण में कोई विवाद शेष नहीं रहा है अत: इस प्रकरण में कोई विवाद नहीं रहा आशय का पंचाट जारी किया जाता है। पंचाट की प्रति प्रकाशनार्थ भेजी जावे।

महेश चन्द्र पुरोहित, न्यायाधीश

नई दिल्ली, 16 दिसम्बर, 2002

का. आ. 23.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार राजस्थान स्टेट मिनरल डवलपमेंट कार्पो. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायाल जोधपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-12- 2002 को प्राप्त हुआ था।

[सं. एल-29012/94/99-आई.आर. (एम)]

बी. एम. डेविड, अवर सचिव

New Delhi, the 16th December, 2002

S.O. 23.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jodhpur as ahown in the Annexure in the Industrial Dispute between the employers in relation to the Management Rajasthan State Mineral Development Corp. Ltd. and their workman, which was received by the Central Government on 10-12-2002.

[No. L-29012/94/99-IR(M)]

B. M. DAVID, Under Secy

अनुबन्ध

जोधपुर

पीठासीन अधिकारी :—श्रीमति निशा गुप्ता, आर.एच.जे.एस.

औ.वि. (केन्द्रीय)सं. : 11/2000

डूंगराराम पुत्र श्री पनाराम जाति जाट निवासी कवास जिला बाड़मेर।

...प्रार्थी

बनाम

दी चीफ माईनिंग इन्जीनियर राजस्थान स्टेट मिनरल डेवलपमेन्ट कॉरपोरेशन लि., खनिज भवन तिलक मार्ग, जयपुर।

...अप्रार्थी

उपस्थिति :-

(1) प्रार्थी की ओर से श्री श्री एल.डी.खत्री प्रतिनिधि उप.

(2) अप्रार्थी की ओर से श्री विनय जैन प्रतिनिधि उप.

अधिनिर्णय

दिनांक 5-10-2002

श्रम मंत्रालय भारत सरकार नई दिल्ली द्वारा अपनी अधिसूचना क्रमांक एल. 29012/94/99 आई.आर.(एम.)दिनांक 24-1-2000 से

निम्न विवाद वास्ते अधिनिर्णय इस न्यायालय को प्रेषित किया गया है :—

"Whether the action of the the management of Rajasthan State Mineral Development Corporation Ltd. Jaipur in terminating the services of Shri Dungraram S/o Shri Pannaram Jat, Ex-Sahayak Karamchari w.e.f. 17-1-98 for withdrawal of resignation for VRS is legal and Justified? If not, to what relief the concerned workman is entiled?"

प्रार्थी की ओर से माँग-पत्र प्रस्तुत करते हुए अभिकथित किया गया है कि अप्रार्थी ने दिनांक 10-11-87 को अपने अधीन आर.एन.डब्ल्यू के पद पर प्रार्थी को नियुक्त किया तत्पश्चात् उसे सोनू लाईम स्टोन प्रोजेक्ट, जैसलमेर पर कार्य करने हेतु निर्देशित किया, अप्रार्थी ने अपने आदेश दिनाकं 25-11-92 द्वारा प्रार्थी व अन्य कर्मचारियों सहित प्रार्थी को नियमित कर्मचारी दिनांक 1-10-92 से घोषित किया गया, उक्त आदेश की पालना में प्रार्थी से नियमित कर्मचारी के रूप में कार्य भार ग्रहण करने हेतु प्रार्थना-पत्र माँगा जो प्रार्थी ने समय पर पेश कर दिया, प्रार्थी का कथन है कि उसकी प्रार्थना पर उसे आकी बेन्टोनाईट परियोजना खदान पर स्थानान्तरित कर दिया जहाँ प्रार्थी ने 4-9-93 को अपनी ज्वाइनिंग दी। अप्रार्थी ने प्रार्थी को हटाने के लिए अपनी सेवेच्छिक सेवा निवृति योजना के अन्तर्गत दिसम्बर 1996 में प्रार्थना-पत्र माँगा, लेकिन प्रार्थी अपनी नौकरी नहीं छोड़ना चाहता था जिस पर अप्रार्थी ने दुर्भावना से प्रेरित होकर अपने आदेश दिनांक 24-12-97 द्वारा प्रार्थी का स्थानान्तरण जिप्सम प्रोजेक्ट हनुमानगढ़ कर दिया, प्रार्थी को स्थानान्तरण आदेश की कॉपी बाड़मेर में 27-12-97 को दी गई तथा उसी दिन एक स्वेच्छिक सेवा निवृति हेतु प्रार्थना-पत्र लिखवा लिया जिसमें 31-1-98 से सेवानिवृति का लिखाया गया, प्रार्थी का कथन है कि वह प्रार्थना-पत्र देने को इच्छुक नहीं था लेकिन प्रार्थी से दबाव के अर्न्तगत प्रार्थना-पत्र लिखा, जब प्रार्थी को अप्रार्थी की बदनियती का पता चला ता उसने 5-1-98 को ही अपनी स्वेच्छिक सेवानिवृति की निश्चित तिथि 31-1-98 से पूर्व ही प्रार्थना-पत्र विड्रो कर लिया। प्रार्थी का यह भी कथन है कि सेवानिवृति की तिथि से पूर्व भी श्रमिक कर्मचारी अथवा नियोक्ता अपना विचार बदल सकता है तथा प्रार्थना-पत्र को अस्वीकार या विड्रो कर सकता है अत: सेवानिवृति के आधार पर सेवामुक्ति अवैध एंव विधि विरूद्ध है। अन्त में प्रार्थना की है कि अप्रार्थी द्वारा पारित आदेश दिनांक 27-12-97 जिसके अर्न्तगत प्रार्थी की सेवानिवृति दिनांक 31-1-98 से की गई को अवैध घोषित किया जावे तथा प्रार्थी को पुन: सेवा में लेने एवं पिछला बकाया वेतन मय परिलाभ दिलाये जाने का आदेश पारित फरमावें।

अप्रार्थी की ओर से उक्त माँग-पत्र का जवाब प्रस्तुत करते हुए कहा गया है कि अप्रार्थी निगम आवश्यकता के अनुसार निश्चित कार्य हेतु अस्थाई रूप से श्रमिकों की नियुक्ति करते हैं। वास्तविकता यह है कि प्रार्थी को निगम के अतिआवश्यक कार्य का निष्पादन करने के लिए जिप्सम परियोजना हनुमानगढ़ पर अन्य कर्मचारियों का भारी स्थानान्तरण किया गया एवं प्रार्थी ने अपनी स्वच्छन्द एवं स्वंय की इच्छा से निगम की स्वेच्छिक सेवानिवृति योजना के अर्न्तगत स्वेच्छिक सेवानिवृति चाहने हेतु त्याग-पत्र दिया गया जिसमें उन्होंने अपनी स्वेच्छिक सेवानिवृति दिनांक 31-1-98 से चाही थी एवं त्याग पत्र पर दो गवाहान श्री एस.एन. ओझा एवं श्री एच.एन. मार्य के हस्ताक्षर हैं जिसे निगम ने अपने आदेश दिनांक 26-2-98 से स्वीकार कर लिया एवं इस आदेश के तहत समस्त देय भुगतान प्रार्थी ने प्राप्त कर लिये हैं, प्रार्थी ने अपना त्यागपत्र स्वेच्छा से बिना किसी दबाव के दिया एवं स्वेच्छा से निगम की सेवा त्याग दी। प्रार्थी द्वारा स्वेच्छिक सेवानिवृति की तारीख 31-1-98 से पूर्व स्वेच्छिक सेवानिवृति को वापस लेने की कोई प्रार्थना नहीं की न ही कोई प्रार्थना पत्र दिया। अप्रार्थी का कथन है कि प्रार्थी द्वारा तमाम प्रकार की देय राशि 81691/- स्वेच्छा से प्राप्त करने के पश्चात् प्रार्थी का अप्रार्थी निगम से कोई किसी प्रकार का सेवा में पुर्नस्थापित होने को कानुनन हक व अधिकार नहीं बनता है। प्रार्थी द्वारा दिनांक 27-12-97 को त्याग पत्र देने के पश्चात् तुरन्त ही अन्य 11 श्रमिकगणों के साथ स्वीकार कर लिया गया था जिसके तहत प्रार्थी को 31-1-98 को स्वोच्छिक सेवा निवृति के तहत कार्यमुक्त कर दिया गया, अप्रार्थी निगम द्वारा किसी भी विधि का उल्लंघ्न नहीं किया, प्रार्थी द्वारा ऐसा कोई प्रार्थना-पत्र 31-1-98 से पूर्व त्याग-पत्र वापस लेने बाबत नहीं दिया अब प्रार्थी को पुन: सेवा में लेने का कोई प्रश्न ही उत्पन्न नहीं होता। अन्त में जवाब के माध्यम से निवेदन किया है कि अप्रार्थी निगम द्वारा 27-12-97 जिसके अर्न्तगत प्रार्थी की सेवानिवृति दिनांक 31-1-98 को की गई जो कि पूर्ण रूप से उचित एंव वैध होने से प्रार्थी पुन: सेवा में स्थापित होने व पिछला बकाया वेतन व परिलाभ प्राप्त करने का अधिकारी नहीं है।

प्रार्थी ने अपने माँग-पत्र की ताईद में स्वंय का शपथ-पत्र प्रस्तुत किया तथा अप्रार्थी की ओर से श्री पी.सी. पुरोहित का शपथ-पत्र प्रस्तुत किया दोनों शपथगृहताओं को एक दूसरे के शपथ-पत्रों पर प्रतिपरीक्षण किया गया। प्रार्थी की ओर से विभिन्न दस्तावेजात की फोटो प्रतियॉ प्रस्तुत की गई।

दोनों पक्षों के प्रतिनिधिगण की बहस सुनी, पत्रावली का अवलोकन किया।

प्रार्थी द्वारा अपने माँग-पत्र व शपथ-पत्र में यह कथन किया गया है कि उसने स्वेच्छिक सेवानिवृति का प्रार्थना-पत्र दबाव के अर्न्तगत दिया था और 17-1-98 को इस प्रार्थना-पत्र को विड्रो कर लिया और उसे सेवानिवृति का प्रार्थना-पत्र स्वीकार होने के पूर्व इसे विड्रो करने का पूर्ण अधिकार था ऐसी स्थिति में 31-1-98 से पूर्व जो उसकी सेवानिवृति की गई है वह अवैध है। इसके विपरीत विपक्षी द्वारा या कहा गया है कि प्रार्थी ने स्वेच्छा से त्याग-पत्र दिया था और 31-1-98 से पूर्व त्याग-पत्र कभी भी वापस नहीं लिया उसने सम्पूर्ण लाभ व परिलाभ स्कीम के अर्न्तगत प्राप्त कर लिये हैं और उसके बाद अनावश्यक यह विवाद उठाया है।

प्रार्थी द्वारा अपने शपथ-पत्र की जिरह मे यह स्वीकार किया है कि उसने त्याग-पत्र दिया था और उसे 81691/-रूपये मिले थे उसने यह भी स्वीकार किया है कि प्रदर्श-1 त्याग-पत्र पर सी टू डी एस. एन. ओझा और ई टू एफ पर एस.एन. मोरिया गवाह के हस्ताक्षर हैं ऐसी स्थिति में सेवानिवृति का प्रार्थना-पत्र उससे दबाव में लिखवाया गया था ऐसी कोई स्थिति नहीं है क्योंकि अगर ऐसी कोई स्थिति होती तो उसके द्वारा साक्षीयों के ब्यान नहीं कराये जाते और वह अपने समर्थन में इन साक्षीयों को न्यायालय में पेश भी कर सकता था परन्तु ऐसी कोई स्थिति न्यायालय के समक्ष पेश नहीं की गई है।

प्रार्थी ने अपनी जिरह में यह भी स्वीकार किया है कि उसने भुगतान प्राप्त करने के बाद प्रस्तुत वाद पेश किया है। जब 17-1-98 को ही प्रार्थी ने अपना त्याग-पत्र वापस लेने का प्रार्थना-पत्र पेश कर दिया था तो फिर उसके द्वारा स्वेच्छापूर्वक भुगतान किस प्रकार प्राप्त किया गया, ऐसी स्थिति प्रार्थी की ओर से प्रस्तुत नहीं हुई हैं। प्रार्थी ने 26 फरवरी, 1998, 19-4-1999 और 1 जनवरी, 2001 के आदेशों द्वारा सेवानिवृति के भुगतान प्राप्त किये हैं। इस प्रकार भुगतान प्राप्त करने के पश्चात् उसका अब यह कहना कि उसकी सेवानिवृति स्वेच्छिक नहीं थी, किसी प्रकार मानने योग्य नहीं है और इस सम्बन्ध में एस.सी.टी. 2000 (1) पेज कंचन कपुर बनाम फेमिली प्लानिंग एसोसिएशन ऑफ इण्डिया का विनिश्चय पेश किया गया है जिसमें स्थिति को स्पष्ट तौर से प्रतिपादित किया है कि जहाँ प्रार्थी ने बिना प्रतिरोध किये समय-समय पर परिलाभ प्राप्त किये हैं तो उसके पश्चात् प्रार्थी पुनः नौकरी पाने का अधिकारी नहीं है।

प्रार्थी की मुख्य आपत्ति यह रही है कि उसने 31-1-98 से सेवानिवृति चाही थी और उसके पूर्व ही 17-1-98 को उसने अपना त्याग-पत्र वापस ले लिया और इस सम्बन्ध में 17-1-98 का प्रार्थना-पत्र भी न्यायालय के समक्ष पेश किया है परन्तु यह प्रदर्श-6 प्रार्थना-पत्र कभी भी विभाग को दिया गया हो ऐसी कोई स्थिति प्रार्थी की ओर से प्रस्तुत नहीं हुई है बल्कि प्रार्थी का जिरह में यह कथन रहा है कि उसने 17-1-98 का प्रार्थना-पत्र रिसीव करवाया था लेकिन वह प्रार्थना-पत्र उससे गुम हो गया। इस प्रकार 17-1-98 का प्रार्थना-पत्र प्रार्थी द्वारा विभाग में प्रस्तुत किया हो ऐसी कोई स्थिति प्रतीत नहीं होती क्योंकि यदि उसने त्याग-पत्र वापस ले लिया होता तो वह बाद मे सेवानिवृति सम्बधी परिलाभ स्वेच्छा से प्राप्त नहीं करता।

प्रार्थी की ओर से एस.बी.सिविल रिट पिटीशन नं. 4558/96 दुलाराम बनाम आर.एस. एम.डी.सी. व अन्य का माननीय उच्च न्यायालय का 24 जुलाई 1998 का निर्णय तथा आर. एल. आर. 2000(3)पेज 566 गोपीकिशन बनाम स्टेट ऑफ राजस्थान व अन्य एस.सी.सी. 2002(3) पेज 437 शम्भु मुरारी बनाम प्रोजेक्ट एण्ड डेवलपमेन्ट इण्डिया लि. व अन्य तथा भारत संघ बनाम विंग कमाण्डर टी.पार्थसारथी एस.सी.सी. 2001(1) पेज 158 के विनिश्चय पेश किये गये जिसमें यह सिद्धॉत प्रतिपादित किया है कि त्याग-पत्र स्वीकार होने के पूर्व किसी भी समय वापस लिया जा सकता है, इस सिद्धात पर कोई विवाद् नहीं है। परन्तु प्रस्तुत प्रकरण में प्रार्थी ने सेवानिवृति का प्रार्थना-पत्र कभी भी वापस दिया हो, ऐसी कोई स्थिति न्यायालय के समक्ष प्रस्तुत नहीं हुई। विपक्षी का यह स्पष्ट कथन रहा है कि प्रार्थी ने स्वेच्छापूर्वक त्याग-पत्र दिया और फिर 81691/-रुपये की राशि अपनी इच्छा से प्राप्त की और उसके पश्चात् अकारण ही प्रस्तुत विवाद पेश किया गया है।

इस प्रकार उपरोक्त विवेचन से यह स्थिति स्पष्ट है कि प्रार्थी को सेवानिवृत किये जाने में कोई भी त्रुटि या अवैधता नहीं है और ऐसी स्थिति में प्रार्थी इस न्यायालय से कोई राहत पाने का अधिकारी नहीं है।

अधिनिर्णय

अतः यह अधिनिर्णित किया जाता है कि श्रमिक श्री डूँगाराम पुत्र श्री पनाराम को अप्रार्थी नियोजक मैनेजमेन्ट ऑफ राजस्थान स्टेट मिनरल डेवलपमेन्ट कॉरपोरेशन लि., जयपुर द्वारा सेवानिवृत किये जाने में कोई त्रुटि या अवैधता नही है। अतः प्रार्थी अप्रार्थी नियोजक से कोई राहत प्राप्त करने का अधिकारी नहीं है।

इस अधिनिर्णय को प्रकाशनार्थ शासन को प्रेषित किया जावे।

निशा गुप्ता, न्यायाधीश

यह अधिनिर्णय आज दिनांक 5-10-2002 को खुले न्यायालय में हस्ताक्षर कर सुनाया गया

निशा गुप्ता, न्यायाधीश
श्रम न्यायालय, जोधपुर।

नई दिल्ली, 16 दिसंबर, 2002

का. आ. 24.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ऑयल इंडिया लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायालय गुवाहाटी के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-12-02 को प्राप्त हुआ था।

[सं. एल-30011/7/2002-आई.आर. (विविध)]

[सं. एल-30011/8/2002-आई.आर. (विविध)]

[सं. एल-30011/13/2002-आई.आर. (विविध)]

बी. एम. डेविड, अवर सचिव

New Delhi, the 16th December, 2002

S.O. 24.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Guwahati as shown in the Annexure in the Industrial Dispute between the employers in relation to the management OIL INDIA LTD. and their workman, which was received by the Central Government on 10-12-02.

[No. L-30011/7/2002-IR(M)]

[No. L-30011/8/2002-IR(M)]

[No. L-30011/13/2002-IR(M)]

B. M. DAVID, Under Secy.

ANNEXURE

IN THE INDUSTRIAL TRIBUNAL : GUWAHATI : ASSAM

Reference Nos. 14(C)/02, Ref. No. 16(C)/02 & Ref. 13 (C)/02.

Present : Shri H.A. Hazarika, LL.B.,
Presiding Officer,
Industrial Tribunal, Guwahati.

In the matter of an Industrial Dispute between :
The Management of
Oil India Ltd., Duliajan.

Vs.

1. Their workmen rep. by the Gen. Secy., Shramik Niyaik Dabi Parishad, Duliajan.
2. Their workmen rep. by Shri Prabhakar Dutta.

AWARD

The following reference cases are arising out of the Govt. Order respectively (I) No. L-30011/13/2002 (IR(M) dtd. 1-8-2002, (2) No. L-30011/8/2002 -IR(M) dtd. 1-8-2002 and (3) No. L-30011/7/2002 -IR (M) dtd. 16-7-2002 relates to the dispute indicated in the schedules below :

1. In Ref. No. 14 (C)/02 :

"Whether the workers represented by Sramik Niyaik Dabi Parisod should be paid wages and all perks equal to these listed 1378 from the same effective date."

2. In Ref. No. 16 (C)/02 :

"Whether the contractual workers represented bythe union (Sramik Niyaik Dabi parisod) engaged by Oil India Ltd., through contracters are entitled to regularisation, effective from the date of thier entry into the job."

2. Whether the 822 contractual workers represented by the union (SNDP) are entitled to equal pay and benefits for exactly the same job, in the same Oil India Ltd., as being given to other 1378 workers w.e.f. 1-1-2000".

3. In Ref. No. 13 (C)/02 :

"Whether the industrial dispute raised by the General Secretary, SNDP over regularisation and other consequential benefits to Shri Prabhakar Dutta justified ? If so, to what relief the concerned workman is entitled ?"

The President and the General Secretary of the Sramik Niyaik Dabi Parisod representing the workmen concern represent . The management is represented by learned advocate Mr. S. N. Sarma, Though this day is fixed for filing written statement as the learned advocate for the management and President and Secy. of the union concerned submitted that the matters are amicably settled up between the parties and also prayed to record the evidence of Secy. for the union concerned.

It is pertinant to note here that between the parties the following reference cases are pending the instant one is Ref. 14 (C)/02 fixed today and Ref. 13(C)/02 is fixed on 8-11-02 and Ref. 16 (C)/02 fixed on 16-11-02. It is also very pertinant to note that all the three cases between the parties as submitted are amicably settled up and prayed that the other two cases respectively 13 (C) 02 and Ref. 16 (C) are put up today.

It is also important to mention here that by a petition learned advocate Mr. S. N. Sarma prayed for amalgamations of the three cases together and to passed a common award. The President and Secretary concerned conceded the petition.

It will be also just to mentioned here that the Secretary and President of the union concerned are not accompanied by learned advocate. To arrive at a just decision as Shri B. N. Sarma is present before me in the Court. I request Mr. B.N. Sarma, advocate to be amicus cury to help the workmen concerned in recording the evidence.

The Secretary Shri D. Saikia is examined in the open court as a solitary witness of the workmen.

I have recorded his evidence by my own hand in Assamese. He has very categorically deposed before me that all the three cases respectively Ref. 14(C)/02, 16(C)/02 and 13(C)/02 are amicably settled up Ref. 14 (C)/02 and Ref. 16 (C)/02 are amicbly settled up with management through conciliations. The Ref. 13 (C) /02 is amicably settled up between the parties i.e. workmen and management directly.

As the matters of Ref. 13 (C)/02, Ref. 14 (C)/02 and Ref. 16 (C)/02 are between the same parties and same nature of matter. The prayer for amalgamation and to pass a common award is considered and allowed. There is 2 vital documents exhibited by the workmen these are i.e. ext. A and ext. B by which settlement are arrived at. When the matter is amicably settled up and when there is evidence deposed by the Secretary, I accepted the settlement held between the parties out side the court.

Under the above fact and circumstances a compromise Award for the three cases are passed by this common award. The ext. A and ext. B. shall form part of the award and the terms and condition of settlement are part and partial of the award. Accordingly prepare a compromise award and be/transmitted the same to the Govt. concerned as per procedure.

H.A. HAZARIKA, Presiding Officer

ANNEXURE Ext. A

MEMORANDUM OF SETTLEMENT

FORM H Dated 4-10-2002

Name of parties present

A. Representative of Principal Employer (Oil India Ltd.)	B. Representative of Union S.N.D.P., Dulianjan
1. Sri D.D. Khaund, CIRM	1. Sri Probhakar Dutta, President.
2. Sri M.M. Majumdar, Sr. IRM	2. Sri T. Chotia, Vice-President.
3. Sri V.K. Verma, Sr. IRM.	3. Sri D. Saikia, General Secretary.
4. Sri S. Borah, Dy. Manager (IR)	4. Sri R. Chowdhury, Org. Secy.
	5. Sri R.K. Das, Jt. Secy.
	6. Sri N. Koch, Cashier.
	7. Sri Naren Sarma.
	8. Sri Nirmal Gogoi.

SHORT RECTIAL OF THE CASE.

The president and the General Secretary of the S.N.D.P. has raised the dispute vide a Strike Notice dated 13-3-2002 to report to strike on 25-3-2002 and there after from 27-3-2002.

The strike notice was seized in conciliation by the ALC(C), Dibrugarh. The Conciliation Proceedings were held from 27-3-2002 several days upto 4-10-2002. On 4-10-2002 the SNDP and the OIL Management were brought to the terms of Settlement which runs as follows :

1. It is agreed that the management of Oil India Ltd., Duliajan, as Principal Employer shall ensure the Payment of Wages to the Contractual workmen, excluding those working under the Scheduled Employments.

1. All the Contractual workmen in non scheduled employments and other than those 1378 listed WCL, covered under the Settlement of 19-4-2000 shall be paid wages of Rs. 90.00 per day.
2. They will be given an amount of 2% of Rs. 90/- per day as allowances.
3. This agreement shall be effective from 1-7-2002 to 30-6-2012 (10 years).
4. The Contractual workers deployed in the following works of the Civil Engineering Deptt. shall also be entitled for the benefits as above.
   (a) Fitter/helper
   (b) Mason/helper
   (c) Carpenter/helper
   (d) Plumber/helper
   (e) Godown helper
   (f) Malibary in OIL Nursary
   (g) Ten helper

In addition to the above the contractual workers employed in the security jobs shall also be entitled to the above benefits.

The contractual workers engaged in the following nature of job will not be entitled for the benefits under this settlement.

(1) Road Construction & Maintenance.
(2) Building Construction & Maintenance.
(3) Grass Jungle/Woods/Shrub Cutting job in any deptts.
(4) Seismic Survey job (except cam maintenance).

It has been agreed by the union as under :

(a) The above will be in full and final settlement of all their demands.
(b) The union and the management shall jointly approach the Industrial Tribunal, Assam, Guwahati for disposal of the reference case as "No Dispute" or "Dispute has been amicably settled by the parties."
(c) Neither the Union nor any indiviual contract labour would raise any demand whatsoever during the tenure of this settlement.

With effect from 1-7-2002, the additional amount of Rs. 10/- per day being paid arising out of—OIL INDIA Circular No. IR : 30/36/8-763 dated 7-9-93 will not be payable to the beneficiaries of this settlement.

The terms of this settlement shall be implemented within 2 months from the date of disposal of the reference case pending at the Industrial Tribunal, under the Provisions of the Industrial Disputes Act, 1947.

The beneficiaries of the Settlement shall be allowed to enjoy the 3(three) National Holidays with pay (26th January, 15th August and 2nd October).

Representative of Principal Employers (Oil India Ltd.)	Representative of Union S.N.D.P. Duliajan
1.	1.
2.	2.
3.	3.
4.	4.
	5.
	6.

Conciliation Officer-cum-Assistant
Labour Commissioner (C), Dibrugarh

Settlement signed before me.

Witnesses :

Ext. 'B'

AGREEMENT

As requested by the SNDP, the management of Oil India Limited agreed to consider the case of Shri Prabhakar Dutta for absorption in Oil India Limited purely on humanitarian ground subject to the condition that the Union (SNDP) will withdraw the dispute [Reference No. 13(C)/02] presently under adjudication before the Industrial Tribunal, Assam, Guwahati.

2.0 The Union (SNDP) agreed to apprise the Hon'ble Tribunal on the next date fixed (i.e. 07/11-2002) that the duspute has, in the meantime, been amicably settled and as such the Union does not want to contest the dispute. Once the Union makes the above submissions before the Tribunal and the Hon'ble Tribunal passes an Award accordingly, the Management would absorb Shri Prabhakar Dutta in the Company's roll subject to his medical fitness.

SRI DUNGESWAR SAIKIA
Secy., SNDP
SRI PRABHAKAR DUTTA
President, SNDP.

Sd/-
CIRM, OIL

Representing SNDP — Representing OIL Management

नई दिल्ली, 5 दिसम्बर, 2002

का. आ. 25.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कलकत्ता डॉक

लेबर बोर्ड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कोलकाता के पंचाट (संदर्भ संख्या 38/94) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-12-2002 को प्राप्त हुआ था।

[सं. एल-32011/2/94-आई.आर. (एम)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 5th December, 2002

S.O. 25.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 38/94) of the Central Govemment Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Calcutta Dock Labour Board and their workman, which was received by the Central Government on 4-12-2002.

[No. L-32011/2/94-IR(M)]

C. GANGADHARAN, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 38 of 1994

PARTIES: Employers in relation to the management of Calcutta Dock Labour Board

AND

Their Workmen

PRESENT: Mr. Justice Bharat Prasad Sharma

Presiding Officer

APPEARANCE:

On behalf of Management — Mr. K.K. Barma, Assistant Administrative Officer (C).

On behalf of Workmen — Mr. A. Banerjee, General Secretary of the Calcutta Port & Dock Industrial Workmen Union and Mr. D.K. Mukhopadhyay, Executive Committee Member of the Calcutta Dock Labour Board Employees' Association.

State: West Bengal. Industry : Port & Dock.

Dated : 28th November, 2002.

AWARD

By order No.L-32011/2/94-IR(Misc.) dated Nil and subsequent order of even number dated 23-08-1996 the Central Government in exericise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the action of the Administrative Body, Calcutta Dock Labour Board, in not granting increment and incremental benefits to 20 employees as per the list enclosed for rendering daily rated/ monthly contingent service is lawful and justified? If not, to what relief the concerned workmen are entiltled to ?"

Names & particulars of the workmen

Sl. No.	Name	Pressent Designation	Staff No.
1.	Shri Tarapada Das	Stenographer	E/1786
2.	Shri Shambhu Nath Ganguly	LDC	E/1459
3.	Shri Bhibhuti Bh. Dey	Peon	E/1353
4.	Shri Shambhu N. Dey	LDC	E/1454
5.	Shri Md. Nathuni	LDC	E/1803
6.	Shri Sk. Md. Islam	Peon	E/1456
7.	Shri Chittaranjan Maity	Peon	E/1801
8.	Shri Jalaluddin Ahmed	LDC	E/1405
9.	Shri Shyam Sundar Mitra	LDC	E/1450
10.	Shri Mohd. Isha	LDC	E/1800
11.	Shri Priya Lal Das	UDC	E/1495
12.	Shri Sandhya Kumar	Typist	E/1494
13.	Shri Asit Baran Sinha	HA	E/1496
14.	Shri Lall Khan	Peon	E/1487
15.	Shri Haradhan Bhatta-charyya	Peon	E/1448
16.	Shri Md. Hakim - II	Peon	E/1452
17.	Shri Arabinda Modak	LDC	E/1805
18.	Shri Anil Kumar Das	Peon	E/1488
19.	Shri Kiran Ch. Chatterjee	Peon	E/1458
20.	Shri Biplab Kumar Roy	Section Offic-er/Inspector-III	E/1492

2. The present reference relates to certain facilities being denied to the 20 employees mentioned in the list attached. The Industrial Dispute was raised on behalf of these workmen by the Union, Calcutta Port & Dock Industrial Workmen Union. However, subsequently, another union to whom some of the concerned workmen had shifted their allegiance also appeared and filed application for being allowed to intervene and was allowed.

3. So far as the written statement filed on behalf of the original union is concerned, it has been stated that the Administrative Body of Calcutta Dock Labour Board being the employer in this case, maintains a schedule of employees under different heads and categories. It is stated that the employer prescribes normal and special qualification, experience etc. for each category of employees and also fixes pay, allowances and other benefits according to normal and special qualifications. It is also stated that

the employer also framed service conditions in a codified book known as 'Service Rules' which prescribed the rules of recruitment, promotion, increment, seniority and retirement benefits apart from other things. Such rule was codified in March, 1965 and the regulations in the rules were on the pattern of the rules in vogue in Calcutta Port Trust. Accordingly, the employer followed the said service rules and such other rules as framed by the Calcutta Dock Labour Board by resolution adopted from time to time. It is further stated that the Board had appointed persons in service of Calcutta Dock Labour Board in various categories as per need and requirement for catering to the work from time to time on different basis, i.e., time rate basis, monthly contingent basis and monthly rate basis by issuing appointment letters. The persons thus appointed were rendering service to the Board and those persons were absorbed in the permanent rolls of the Dock Labour Board by issuing such letters of appointment from time to time. It is further stated that the Board had not extended any increment benefit to those incruments for the period they rendered daily rated or monthly contingent service under the Board. According to the union there were altogether 260 such persons appointed on daily rate and monthly rate basis in Class III and Class IV categories and these appointments were made between 1958 and 1979. It is stated that the Board during 1958-1959 had appointed 119 persons in Class III and Class IV categories as daily-rated staff and regularised their services by Resolution No. 50 dated 02-05-1960. Again, the Board appointed 20 pesrons, who are the persons concerned in this dispute, in 1970 and they were also absorbed in December, 1971 in the permanent rolls. It is further stated that the Board between 1972 and 1979 had also given appointment to 121 Class III and Class IV empoyees and their services were also absorbed and regulsrised by Resolution No. 86 dated 04-02-1983. It is further stated that the aforesaid 260 persons had been allowed all other service benefits, such as leave facility, P.F. contribution, gratuity and pension for the period they rendered daily-rated service, excepting the increment and incremental benefits. It is stated that this facility was further extended to them by Resolution No. 50 dated 02-05-1960 and resolution No. 121 dated 29-12-1984 by administrative orders, but this facility was not extended to the concerned 20 persons who are the persons being represented in this reference. They did not get extension of incremental benefit for the period they rendered daily-rated service prior to their absorption in regular rolls. It is further stated that such aggrieved persons also represented to the management and in a meeting of the Board vide Resolution No. 70 dated 25-09-1987 and another resolution No. 27 dated 02-09-1989 the management allowed such increment to such persons who were appointed on daily rate or monthly rate basis in the years 1958-1959 and also in the years 1972 and 1979, but the claim of the affected 20 workmen was rejected by Resolution No. 27, clause (b) dated 02-09-1989 and the only reason assigned was that their case was not analogous to the cases of others to whom the facility was granted. It is further stated that when the Board rejected the claim of the affected workmen, they rasied dispute by writing to the Assistant Labour Commissioner (C), Calcutta III by writing a leter dated 20th April, 1992. The conciliation proceding took place, but ended in failure and accordingly the present reference was made. It is submitted that the affected workmen, 20 in number, did not get the incremental benefit by rejection of their claim by the Board, though they were also similarly situated as the other employees to whom such benefits were extended. Accordingly, it has been submitted that according to the principle like should be treated alike, they should be granted benefit and refusal of their claim by the Board is illegal, unconstitutional and unlawful and unjustified. It is submitted that the claim of the concerned workmen was rejected or irrational ground and accordingly the prayer has been made that the claim of the workman should be considered and relief should be granted to them in the form that they should be allowed to get the benefit of increment for the period they served on daily-rate or monthly-rate basis.

4. In the written statement filed on behalf of the management it has been stated that the claim of the workmen concerned is not tenable inasmuch as there is no record to show that these 20 employees had rendered continuous service as daily-rared temporary employee prior to their absorption against the permanent posts. It is further stated that on the basis of recommendation of the joint committee by its Resolution No. 5 dated 18th July, 1989 the Board in its meeting by Resolution No. 27 dated 02-09-1989 resolved that Shri Dulal Chattacherjee and 33 others should be granted benefit, but the concerned 20 persons were not entitled to this benefit as their case was not analogous to the aforesaid 33 persons. It is further stated that upon submission of the representation it was decided that such benefit should not be extended to these 20 persons as their case was not similar to others and accordingly in Resolution No. 5 dated 18-07-1989 their claim was rejected. In this connection it has been submitted that the allegations made in the different paragraphs of the writrten statement filed on behalf of the union are denied and in the union is put to strict proof of it. It is, however, stated that there was no record available to show that the aforesaid 20 persons had rendered continuous service for one year on daily rate/ temporary basis prior to their absorption in permanent post and accordingly their claims was not fit to be considered and in this view of the matter, it has been submitted that the workmen concerned are not entitled to any relief as claimed by them.

5. The second union, i.e., Calcutta Dock Labour Board Employees' Association has also filed a similar written statement as filed by the original union and this union has also claimed that 9 persons named in the list attached to the reference belonged to their union and they are also entitled to the incremental benefit as claimed by

the original union on behalf of the 20 persons originally. This union has adopted the written statement of the original union for all intents and purposes.

6. All the parties adduced evidence. So far as the original union is concerned, it examined two witnesses, namely, WW-1, Tarapada Das and WW-2, Shambhu Nath Ganguly. The added union examined WW-3, Priyalal Das. They supported the case of the two unions. However, the management has not examined any witness, but has relied on some documents.

7. So far as WW-1 is concerned, he has stated that he was originally appointed as Typist on monthly contingent basis on 16-02-1970 and he was permanently absorbed on 13-12-1971 in the post of Typist. According to him he was given leave benefit, salary and bonus during the period as monthly contigent worker, but he was not granted any increment after completion of one year of service before his permanent absorption and accordingly he applied for giving him increment in 1972, but it was refused by the management. He further stated that daily rated employees and employees on monthly contingent basis who were appointed either before his appointment or even after his appointment were given the benefit of increment by the Board, but his case was rejected and the reason was assigned that his case did not stand on the same footing as that of others. Accordingly, he had preferred appeal before the Chairman, but the rate of the appeal was never known to him and then the dispute was raised. In his cross-examination, he has stated that some of the employees appointed in 1960 or earlier had filed a writ petition before the Hon'ble High Court for getting the increment and other benefits, but the said writ petition was disposed of by the Hon'ble High Court with direction that the Board will consider the matter and accordingly the Board considered their matter and granted the benefit to them, but this benefit was denied to the other persons including this workman. The withness has, however, stated in his further cross-examination by the added party union that cut of the 20 concerned workmen, 12 persons were in Class-III and 8 belonged to Class-IV.

WW-2 has also stated that he had joined service of the Board as a daily-stated Peon in May, 1970 and on 19-08-1971 he got permanent status. He further stated that during his service as daily-rated Peon he was appointed as a Cycle Peon which was a temperary appointment, but on 19-08-1971 he was absorbed in the said post of Cycle Peon. He further atated that he was not given additional increment after completion of one year's service of his joining and on 28-05-1990 he had raised a claim for grant of such benefit, but he did not get it. According to him 20 concerned persons including himself were denied this benefit, though others got it who were also earlier daily-rated and monthly contigent workers and were absorbed and regularised in the service. Accordingly, he preferred an appeal to the Board, but the result could not be intimated to him. He has stated that the Board made differential treatment towards these 20 persons and accordingly he has prayed for this benefit. However, in his cross-examination, he has admitted that he was originally appointed against a leave vacancy of one peon, Ajit Kumar Dey on no-work-no-pay basis. He was appointed purely on temporary basis and for the first time he was given appointment against a permanent vacancy on 19th August, 1971 and later he was confirmed in the post.

WW-3 has stated that he had joined Dock Labour Board on 16-04-1970 through appointment latter, Ext. W-12 and he was appointed as a casual labour and later his service was regularised on 13-06-1971. He further stated that during the period of his engagement as casual worker he was attending duties regularly and continuously and the management had no grievance against him. He also stated that his regularisation was not on any other ground than on account of his regularity and work. He also stated that other persons of his association was employed as casual worker like him and they were also working regularly and their services were also regularised like him. He has also stated that prior to 1970 also temporary appointment of casual workers were made in the Calcutta Dock Labour Board and according to him in 1958-1959 119 such casual workers were employed. Thereafter, casual appointment were also made in 1970-1971 and thereafter in 1978-1979 121 persons were employed as casual workers. He has also stated that the persons employed in 1958-1959 and also in 1978-1979 were regularised in services, though they were returned on casual basis for sometime and thereafter their services were regularised. He has further stated that he has not got the benefit as made available to 240 other persons whose services were regulsrised. He has further stated that these 240 prsons were getting annual increment that during the period of their employment as casual workers, but these cocnerned workmen have not got the same. He has stated during the period when they were working as casual workers, they were paid their salaries like other employees and he further stated that when the increment facility was made available to them, they also made a representation to the management, but the management did not take notice of it. He has stated that it is incorrect to say that their case was different from that of the aforesaid 240 persons. He has also stated that he cannot say whether the service records of these persons were not available and he has asserted that his service record is very much available. According to him all the workers engaged on casual basis were working in similar manner and the Board had extended same facility to 240 casual workers, but this facility of additional increment was denied to these concerned workmen. In his cross-examination he has stated that his initial appointment was temporary on the post of a Typist and he had worked in that capacity till 13-06-1971. He further stated that he used to receive leave and holiday facilities during that temporary period and he was also getting payments for weekly holidays and

offdays. However, he has stated that he has no paper to shao that during 16-04-1970 and 13-06-1971 he had worked for more than a year continuously. He has, however, asserted that he was working continuously during that period and in this context he has stated that he has no knowledge why his prayer was not accepted by the Board.

So far as the oral evidence of the three witnesses examined on behalf of the two unions are concerned, since no witness has been examined on behalf of the management, they remain uncontroverted.

8. So far as the documents are concerned, 12 documents each have been marked on behalf of the unions aw well as the management. So far as the unions are concerned, Ext. W-1 is a letter indicating that the service rules were framed by one Accounts Officer on special duty of the Board. Ext. W-2 is the appointment letter of Tarapada Das, WW-1. From this appointment letter is appears that he was appointed on temporary post on 11-12-1971. Ext. W-3 is the controvercial Resolution dated 02-09-1989 by which 33 persons were granted benefit of additional increment for the period of service rendered by them before their absorption and by another clause this benefit was denied to the concerned 20 persons and the only reason which appears to be assigned is that their case according to the Board did not appear to be analogous to the case of others. Ext. W-4 is an office order dated 25-08-1997 by which some benefits were extended to the persons temporarily employed. Ext. W-5 is a letter issued to WW-1, Tarapada Das, one of the concerned workman by which the Administrative Officer of the Board stated that his service rendered on temporary post could not be counted towards the regular service as per rules. Ext. W-7 is a circular dated 12-03-1986 by which the Financial Adviser and Chief Accounts Officer had supported extention of benefit of past service to daily-rated staff taken into regular employment, if they had completed one year of continuous service. Ext. W-8 is the representation filed on behalf of these workman concerned to the Chairman in which it was stated that whereas the facility of additional increment was granted to 86 persons appointed between 1958 to 1959 and also to 121 persons appointed between 1972 to 1979, it was not granted to other persons and subsequently by Resolution dated 02-09-1989 this benefit was also extended to 33 persons appointed between 1958 and 1959, but it was denied to the 20 persons appointed in 1970 who are the concerned workman in this case. Accordingly, it was prayed by these workman that because they had also worked on the same terms and conditions as the other workers and bacause they had worked satisfactorily for more than a year during the period of their temporary appointment and later their services were regularised, they are also entitled to this benefit. Ext. W-9 is the list of the 20 workmen concerned Ext. W-10 is a letter sent by the General Secretary of the Calcutta Port & Dock Industrial Workmen Union to the A.L.C(C), Calcutta-I in the matter of this dispute. Ext W-11 is the failure report submitted by the Assistant Labour Commissioner(C), Calcutta-III in the matter of this dispute. Ext W-12 happens to be a letter of appointment to one Priyalal Das on the post of a Typist by way of temporary appointment. This Piryalal Das is WW-3.

9. So far as the documents on behalf of the management are concermed, Ext. M-1 is the copy of Resolution No. 50 dated 20-05-1960. By this resolution it was decided that the daily-rated Clerks of the Board were to be converted into regular workers on fulfilling the condition that they had completed service for one year continuously and it was mentioned in it that the working period of unbroken service will be counted on the basis that the workman reported for duty on all days as required including Sundays and Holidays as also absence on leave duly granted by the appropriate authority. It clearly means that the temporary persons working in the capacity of daily-rated or monthly-rated basis were to be absorbed in permanent posts on completion of their service of one year continuously. Ext. M-2 is Resolution No. 86 dated 04-02-1983 by which those persons working on daily or monthly rate basis against permanent vacancies were to be made permanent. Ext. M-3 is Resolution No. 121 dated 29-12-1984 by which certain benefits were extended to the persons who were earlier working as contingent monthly basis and were subsequently regularised in service. Ext. M-4 is Resolution No. 70 dated 25-09-1987. From this resolution it appears that one Mihir Dasgupta and others daily-rated/monthly contingent staff numbering about 60 converted into regular monthly paid staff be granted one special grade increment for the services rendered by them as temporary employee and it was also stated in this resolution that the aforesaid benefit be also extended to the employees who were extended certain benefits excepting the incremental benefit vide Resolution No. 121 dated 29-12-1984 subject to the condition that they had rendered daily/monthly-rated service for more than one year prior to their absorption and that it was to be granted as a special case without creating any precedence. Ext. M-5 is the said controversial Resolution No. 27 dated 02-09-89 by which the benefit was denied to the 20 workmen concerned, whereas it was granted to other 33 persons. Ext. M-6 is the xerox copy of a telegram received by the Board from the Ministry regarding conversion of daily-rated Clerks into regular temporary Clerks as proposed by the Board. Ext. M-7 is the letter in confirmation of the aforesaid telegram, Ext. M-6. Ext. M-8 is Resolution No. 32 dated 03-05-1960 by which the principle of conversion was enunciated by the Board. Ext. M-9 is Item 7 of an agenda for the meeting dated 17th May, 1960 by which the proposal of the Board was considered regarding conversion of the posts. Ext. M-10 is the xerox copy of a letter sent by the Deputy Chairman of the Board to the Chairman. In this letter it was stated that he had discussion with the Employees Association on 18-07-1966 in the matter of claim of Class-III and Class-IV daily-rated staff who were converted to the monthly roll much later and their demand

was that they should be considered to be adjusted from the date of their appointment as daily-rated or monthly rated employees and the Deputy Chairman had accordingly sought the view of the Chairman in the matter. On the back of this letter the note of the Chairman also appears in which it was stated that a daily-rated staff could be converted to the monthly roll provided he had worked regularly in that capacity, but the duration for which person worked on daily-rated basis was not to be considered for deciding seniority. Ext. M-11 is also an appointment letter of WW-1, Tarapada Das in Temporary capacity. Ext. M-12 is Resolution No. 32 dated 03-05-1960 regarding grant of some benefits to such Clerks. It is not material.

10. In the light of the evidence it has been submitted on behalf of the management that because the Board had decided that these 20 persons were not entitled to additional increment for the service rendered during the period as daily or monthly rated worker on the ground that their case was not similar or analogous to that of 33 persons, the claim of the workman do not appear to be justified. But, in this connection, it has been submitted on behalf of the workman that from the documents on the record, apart from the oral evidence of the three witnesses for the unions, it will become clear that the very concept of regularisation was based on the persumption that the workman has completed more than a year's service as daily or monthly rated worker. It is also pointed out that from Ext. W-5 which is the letter addressed to WW-1, Tarapada Das it is clear that he had rendered service for more than a year between 16-02-1970 to 10-12-1971 on temporary basis, though it was stated that the period could not be counted towards his regular service, but that is another matter. So far as counting of the period of service as daily-rated/monthly rated workman before regularisation for the purpose of considering the seniority etc. is concerned, it had nothing to do with the benefit of additional increment. It has rightly been pointed out on behalf of the workmen that from Ext. M-4 it appears that in principle it was decided that the benefit of additional increment should also be extended to other employees on the condition that they had rendered daily/monthly rated service for more than one year prior to their absorption, but without assigning any reason the claim of the workman was ignored vide Resolution No. 27 in Clause (b) which only says that their case is no analogous. It has been submitted in this connection on behalf of the management that the workmen or the unions have failed to produce any record to show that these concerned persons had completed continuous service for more than a year during the period of their work as daily/monthly rated workers and, therefore, their claim cannot be treated as proved. In this regard it has been submitted on behalf of the unions that so far as the records of services are concerned, the same are supposed to be maintained and kept in the custody of the management and not of the individual workers or the unions. Therefore, if the management wanted to show that these persons had not completed continuous service for more than a year during their period of work as daily/monthly rated workers, they should have produced the records, but it has not been done. Moreover, it has been submitted that it becomes clear from the documents that the regularisation was made on the ground that such persons had worked for more than a year continuously as daily/monthly rated workers. Therefore, now it does not lie in the mouth of the management to say that they had not completed more than a year of continuous service before their absorption, because, both these stands are contradictory to each other.

11. I find substance in the contention of the unions. I do not find any reason to feel that these concerned workman had not completed more than a year's service as daily/monthly rated workers before their absorption in regular cadre or category and if the benefit of additional increment was granted to all other workers who were also appointed similarly in daily-rated/monthly-rated jobs and were later regularised, there does not appear to be any reason why the claim of these concerned workmen could not be considered favourably. The claim of the workmen has been simply rejected in the controversial resolution, Ext. M-5 by saying that their case was not analogous to others. The reason assigned in the resolution concerned and the explanation offered before the Tribunal do not appear to be convincing. It appears that the claim of the workmen concerned is genuine and they deserve the benefit of one additional increment as granted to other workmen similarly appointed on daily-rated/monthly basis and subsequently absorbed and regularised which included the persons appointed prior to the concerned persons and also subsequent to them.

12. Accordingly, the prayer of the unions is allowed and it is decided that the action of the management is not justified and it is held that the concerned 20 workmen are entitled to additional increment like other employees of similar category.

Dated, Kolkata,

The 28th November, 2002.

B. P. SHARMA, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2002

का. आ. 26.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जयपुर के पंचाट (संदर्भ संख्या 7/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-12-2002 को प्राप्त हुआ था।

[सं. एल-12011/235/2000-आई.आर.(बी.-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 11th December, 2002

S.O. 26.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central

Government hereby publishes the award (Ref. No. 7/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 10-12-2002

[No. L-12011/235/2000-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

CASE NO. CGIT

Reference No. L-12011/235/2000/IR(B-II) under sub-section 1 and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947.

The General Secretary,
PNB Employees Union,
C/O PNB, B.O. Cinema Road,
Ajmer (Rajasthan) ... Applicant Union

VERSUS

The Regional Manager,
Punjab National Bank,
Super Bazar, Bharatpur,
Rajasthan. ... Non-applicant

PRESENT:

Presiding Officer: Sh. R.C. Sharma.

For the applicant : Sh. S.P. Singh

For the non-petitioner : Sh. Surendra Singh

Date of award : 08-11-2002.

AWARD

1. The Central Government has referred the following industrial dispute under clause D of sub-section 1 and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (in short, the Act) for adjudication which reads as under:-

"Whether the action of the management of PNB Bharatpur dated 29-9-98 in imposing the punishment of stoppage of two increments with cumulative effect in upon Shri Attar Singh is justified? If not, what relief Shri Attar Singh is entitled to?"

2. General Secretary, PNB Employees Union has filed a statement of claim alleging that the workman Sh. Attar Singh was employed by the non-applicant bank as Security Guard, who is an active workman of the Union, that he was served with a memo of charge dated 16-6-95 wherein a charge of misconduct was levelled against him that on 21-4-95 he gave a beating to his officer in furtherance of the incident happened on 6-12-94. The Union has stated that the workman was not provided with the relevant documents related to the enquiry and by the order dated 29-9-98 his two annual increments were stopped with cumulative effect and the remaining salary of his suspension period was ordered to be forfeited. Aggrieved with the order of the appointing authority, he preferred an appeal, which was rejected on 22-11-99. Thereupon, the workman agitated the dispute before the Conciliation Officer who filed a failure report.

3. The Union has averred that the service conditions of the workman employed in the non-applicant bank were governed by the bipartite settlement and that according to para 19.5 (C) of the settlement he was served a memo of charge for the incident which occurred near the "Kali Ki Bageechi" situated at Bharatpur. The reason behind this beating has been described as related to the incident occurred on 6-12-94. The alleged misconduct was not committed within the premises of the non-applicant bank and that it was a public place. The Union has further stated that the FIR was lodged with the police station against the workman under Sections 323, 341 IPC and after his trial, he was acquitted of the offences by the competent Court. He was not provided an opportunity to produce his defence witnesses during the enquiry proceedings, that Sh. G.S. Nerula, the former Enquiry Officer on being explained the situation by the workman to him, has conveyed the employer that no charge is made out against the workman, and that on this sole ground, the enquiry was taken away from him, that the departmental enquiry was conducted inviolation of the principles of natural justice, that the incident occurred on 6-12-94 cannot be related to the incident of 21-4-95 and that the employer has not initiated any departmental action against the incident occurred on 6-12-94. The Union has further averred that the whole departmental enquiry is invalid, the services of the workman have been adversely affected by the impugned order and that the order dated 29-9-98 is unjustified and invalid.

4. Refuting the fact as stated in the statement of claim, the non-applicant bank in its reply has pleaded that the present dispute cannot be treated as an industrial dispute, that Sh. Attar Singh is not an active member of the applicant Union, that full opportunity of the hearing in the departmental enquiry was given to the workman and it has been conducted in accordance with the principles of natural justice, that the Court has acquitted the workman on the technical grounds and the departmental proceedings as well as the trial in the criminal case are entirely separate proceedings. That there is no impediment in initiating the departmental enquiry even if the workman has been acquitted of the offences by the competent by the competent Court, that the Enquiry Officer Sh. G.S. Nerula was transferred on the administrative grounds, that Enquiry Officer has conducted the enquiry impartially and the penalty order against the workman is justified and valid

and the workman is not entitled to get the relief as claimed by the Union.

5. On the preliminary issue of the fairness of the enquiry, I have heard both the ld. representatives for the parties and have gone through the record.

6. The ld. representative for the workman, assailing the fairness of the domestic enquiry, has argued that the former Enquiry Officer Sh. G.S. Nerula opined to the establishment that no charge is made out against the delinquent, but the department by hook or by crook wanted to punish the workman, therefore, Sh. G.S. Nerula was replaced by the another Enquiry Officer, that the Enquiry Officer has declared the departmental witness as hostile without the request of the Presenting Officer which is not within his jurisdiction, that the Presenting Officer has not conducted the examination-in-chief of the departmental witnesses, that the workman has been acquitted of the offences involving the same incident by the Court of the Additional Judicial Magistrate No. 2, Bharatpur vide his judgment dated 16-3-96 and on the same grounds, the departmental enquiry cannot be initiated and that alleged occurrence does not amount to be a misconduct since it was not committed within the bank premises and that the Enquiry Officer has based his finding on the occurrence committed on 6-12-94, for which the department has not initiated any disciplinary action against the workman and the case was closed by the department. He has emphatically argued that relying on the incident of 6-12-94 has resulted in the perverse finding by the Enquiry Officer.

7. Per contra, the ld. representative for the non-applicant bank submits that even after the acquittal of the workman for the same offence, the departmental enquiry can be continued against him, that the occurrence dated 21-4-95 is related to the previous occurrence of dated 26-12-94, that Sh. G.S. Nerula was not replaced on the ground of the said opinion given by him to the establishment, but on account of his transfer outside the headquarters, the new Enquiry Officer was appointed and that the workman has not pointed out the infirmities with the departmental enquiry.

8. I have bestowed my earnest consideration to the rival contentions and have carefully gone through the judicial verdicts referred to before me.

9. The ld. representative for the workman has argued that since Sh. G.S. Nerula, the Enquiry Officer had opined to the establishment that no charge was made out against the workman, he was transferred simply on this ground. It has been denied on behalf of the non-applicant bank. A peep into the record does not support this contention of the ld. representation. The next submission advanced by the ld. representative for the workman is that the Enquiry Officer has declared the departmental witnesses hostile, the jurisdiction thereof he did not entertain. It is evident from the record that Sh. Shivcharan Boriwal, a departmental witness has been declared hostile, but the request to declare him hostile was made by the Presenting Officer. The deposition of this witness contains a note that the Presiding Officer requested the Enquiry Officer to declare the witness hostile and further he sought permission to cross-examine him. Similarly, the contention of the ld. representative that the Presiding Officer has not conducted cross-examination of the departmental witnesses, does not find any aid from the record. The departmental proceedings disclose that the examination-in-chief of the departmental witnesses have been conducted during the enquiry proceedings. Accordingly, these arguments advanced by the ld. representative are not convincing and hence, are not tenable.

10. The ld. representative for the workman has also argued with force that the workman was acquitted of the offence involving the same incident by the Judicial Court vide its judgment dated 16-3-96 and that on the same grounds, no departmental enquiry can be initiated against him. In support of his contention, he has cited AIR 1999 SC 1416 & 2001 WLC Rajasthan 219. In AIR 1999 SC 1416, the Hon'ble Supreme Court, considered the issue whether departmental proceedings and proceedings in a criminal case launched on the basis of the same set of facts can be continued simultaneously and the Hon'ble Court has observed as under:—

"The findings recorded by the Inquiry Officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by Police Officers and Punch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the 'raid and recovery' at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the *ex parte* departmental proceedings, to stand."

11. This view has been followed by the Hon'ble Rajasthan High Court in 2001 WLC Rajasthan 219.

12. But contrary to the aforesaid view, the Hon'ble Supreme Court in the case of Secretary, Ministry of Home Affairs & Anr. Vs. Tahir Ali Khan Tyagi reported in JT 2002 (Suppl.1) SC 520 has observed a distinct view which is quoted hereunder :—

"Departmental proceeding and criminal proceeding can run simultaneously and departmental

proceeding can also be initiated even after acquittal in a criminal proceeding particularly when the standard of proof in a criminal proceeding is completely different from the standard of proof that is required to prove the delinquency of a Government servant in a departmental proceeding, the former being one of proof beyond reasonable doubt, whereas the latter being one of preponderance of probability."

13. In view of the subsequent observation made by the Hon'ble Supreme Court, the contention raised by the ld. representative that when for the same allegation the workman has been acquitted, the departmental proceeding on the same facts cannot be continued against him, is not sustainable.

14. Now, I am called upon to adjudicate on the crucial issue of maintainability of the charge for committing the gross misconduct by the workman outside the premises of the non-applicant bank.

15. The ld. representative for the workman has argued emphatically that the charge levelled against the workman does not amount to be misconduct as per para 19.5 (C) of the bipartite settlement. He has stressed upon that as per this clause, the misconduct ought to have been committed within the premises of the bank, whereas the charge discloses that it was committed outside the premises of the bank. In support of his contention, he has invited my attention towards aforesaid clause of the bipartite settlement which states that the gross misconduct shall be meant on the part of an employee when it is committed within the premises of the bank. This proposition has been fairly conceded by the ld. representative for the non-applicant bank.

16. The memo of charge dated 16-6-95 states that the workman on 21-4-95, at about 5 pm, in the presence of staffers gave beating to Sh. D.D. Taylor, officer of the establishment, near "Kali Ki Bageechi" situated at Bharatpur and thereby committed a misconduct which comes under the purview of para 19.5 (C) of the bipartite settlement.

17. Thus, it is clear that the alleged misconduct was not committed by the workman within the premises of the non-applicant bank and the incident occurred outside the bank premises. Accordingly, this misconduct is not covered by the relevant clause 19.5 (C) of the bipartite settlement, which governs the service conditions of the employees to the non-applicant bank and, thus, for the alleged occurrence or misconduct, even no charge could be framed against the workman.

18. The ld. representative for the non-applicant bank has pointed out that the said misconduct was committed by the workman in furtherance of grudge borne on account of the incident taken place on 6-12-94 which is also incorporated in the memo of the charge. True it is, that this fact is also described in the memo of the charge that on 6-12-94, when the workman was asked to render his explanation as to how did he get open the almirah under the control and possession of Sh. D.D. Taylor without his permission, then he misbehaved with Sh. D.D. Taylor and being inimical, he gave a beating to the said officer on 21-4-95. Thus, the incident occurred on 21-4-95 has been linked with the previous incident dated 6-12-94 by the non-applicant.

19. Now, a question crops up—whether the misconduct committed on 21-4-95 can be deemed to be in continuation with the previous incident dated 6-12-94 and whether the non-applicant establishment was alive on the issue of the former misconduct pertaining to the incident of 6-12-94.

20. Obviously, both the incidents are distinct one and the subsequent incident has occurred after a lapse of a period of about four months. The workman was inimical towards Sh. D.D. Taylor, the officer of the bank, is not corroborated by the record and furthermore, MW-1, Sh. M. L. Thathera, former Branch Manager of the non-applicant bank, has admitted in reply to the question put up by the defence nominee to him that a dialogue was held between Sh. Taylor and the workman Sh. Attar Singh and it was settled that after forgetting the previous incident, both of them should work amicably and that on 22-2-95, the matter pertaining to the occurrence dated 6-12-94 was filed. When one of the departmental witnesses has admitted this fact that the matter relating to 6-12-94 did not further exist, then how this occurrence could be linked with the subsequent event dated 21-4-95 later on. Hence, I find that the submission raised by the ld. representative for the non-applicant, to this extent that both the occurrences are linked with each other, is not established on the basis of the evidence on record.

21. However, it is astonishing that when the incident relating to 6-12-94 was amicably got settled between Sh. Taylor and the workman, and it was subsided, even then it has formed a part of the evidence and resultantly it has become a substantial ground of proving the charge against the workman, which has found its place in the enquiry report submitted by the Enquiry Officer. Thus, the finding of the Enquiry Officer is perverse which has caused the prejudice to the workman.

22. The ld. representative in support of his contentions has cited before me **1994 (1) LLN SC 58,** wherein the Hon'ble Supreme Court has relied upon its former decision delivered in Central India Coal Fields Ltd., Calcutta **Vs.** Ram Bilas Shobnath reported in **AIR 1961 SC 1189.** The relevant port of the observation is quoted as below:—

"This Court then observed that in the special circumstances of this case it is clear that the incident took place in the quarters at a short distance from the coal-bearing area. If the incident occurred in the quarters occupied by the workmen who were working in a nearby coal bearing area, one can safely conclude that the incident

occurred in the vicinity of the establishment and that was the governing factor which swayed the decision. And the decision was reached as specifically stated in the special circumstances of the case while leaving no trace of doubt about the normal approach in law to the construction of a standing order that it would apply to the behavior on the premises where the workmen discharge their duties and during working hours of their work. This clearly imports time-place content in the matter of construction. This decision would rather clearly indicate that the misconduct prescribed in a standing order which would attract a penalty has a casual connection with the place of work as well as the time at which it is committed which would ordinarily be within the establishment and during duty hours."

23. Thus, the contention put forth by the ld. representative for the workman is fortified by the judicial verdict and is tenable.

24. On the reasons discussed above, I feel inclined to hold that the charge levelled against the workman has not been covered by clause 19.5 (C) of the bipartite settlement and is unwarranted and that the finding recorded by the Enquiry Officer is perverse and the departmental enquiry conducted against the workman stands vitiated.

25. Accordingly, the reference is answered in affirmative and an award is passed in favour of the workman and it is held that the order dated 29-9-98 passed by the non-applicant establishment withholding the two annual increments with cumulative effect and retaining the wages/ salary/allowances of the workman during his suspension period in addition to his subsistence allowance is illegal and invalid. The workman is entitled to get his due annual increments and all the consequential benefits during his suspension period, which were retained by the non-applicant bank.

26. Let a copy of the award be sent forthwith to the Central Government for publication under Section 17(1) of the Industrial Disputes Act, 1947.

R. C. SHARMA, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2002

का. आ. 27.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जयपुर के पंचाट (संदर्भ संख्या 1/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-12-2002 को प्राप्त हुआ था।

[सं. एल-12012/54/98-आई.आर.(बी.-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 11th December, 2002

S.O. 27.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1/99) of the Central Government Industrial Tribunal-cum-Laour Court, Jaipur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 10-12-2002.

[No. L-12012/54/98-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

Case No. CGIT J-1/99

Reference No. L-12012/54/98/IR(B-II) under clause D of Sub-section 1 and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947.

The President,
Association of P.N.B. Emplyees,
Rajasthan, Aacharyao-ki-Gali,
Kishanpole Bazar, Jaipur.

—Applicant Association

Versus

Assistant General Manager,
Punjab National Bank, Gopinath Marg,
MLA Quarters, Jaipur.

—Non-applicant

PRESENT :

Sh. R.C. Sharma.	:	Presiding Officer
For the applicant	:	Sh. R.C. Jain.
For the non-petitioner	:	Sh. Surender Singh.
Date of award	:	20-11-2002.

AWARD

1. The Central Government in exercise of the powers conferred under clause D of Sub-section 1 and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (in short, the Act) has referred an industrial dispute to this Tribunal for adjudication which runs as under: —

"Whether the action of the management of Punjab National Bank in termination the services of Sh. Rajesh Bhargava w.e.f. 13-3-92 is legal and justified? If not, to what relief the said workman is entitled?"

2. In the statement of claim the applicant-association has pleaded that the workman Sh. Rajesh Bhargava was appointed in the non-applicant bank on 22-6-81, who was working as clerk/accountant as a permanent employee, who was served with a chargesheet dated 22-5-90 which was issued by an officer not competent to issue the same as per the bipartite settlement. After conducting the domestic enquiry by the department vide order dated 13-3-92, the workman was terminated from his

service. On the various grounds, the applicant-association has challenged the fairness of the enquiry and has stated that the charges leveled against the workman could not be proved during the course of the domestic enquiry. The applicant-association has prayed that the termination order dated 13-3-92 may be declared to be illegal and unjustified, the workman may be reinstated in the service with its continuity and with back-wages.

3. In the written statement, denying the facts as alleged by the applicant-association, it has been averred that the workman Sh. Rajesh Bhargava had fraudulently withdrawn the amount worth Rs. 15.000/- from the non-applicant bank, therefore, he was chargesheeted and after conducting a proper and fair enquiry, his service was terminated w.e.f. 13-3-92.

4. After hearing both the parties on the preliminary issue of the fairness of the domestic enquiry, this Tribunal vide its order dated 25-4-2001, found that the domestic enquiry was improper and the case was fixed for producing the evidence on behalf of the employer. In the aforesaid order, this Tribunal has observed that on the same set of the facts, the other bank officers/officials, viz., Sh. Ravi Kumar, Sh. Sitaram Aggarwal and Sh. KP Mina were also served with the chargesheet, the copies thereof were not furnished to the workman during the proceedings of the domestic enquiry, which has caused the prejudice to the workman.

5. In the evidence before the Tribunal, the non-applicant bank has examined MW-1, Sh. Sitaram Aggarwal, Manager and the applicant-association has got examined WW-1 Sh. Rajesh Kumar Bhargava.

6. I have heard both the parties and have gone through the record.

7. The ld. representative for the non-applicant has argued that this Tribunal has considered the domestic enquiry to be unfair on the ground that the copies of the chargesheets issued to the other officers/officials of the bank in the context of the same misappropriation of the public money were not supplied to the workman during the enquiry proceedings, which the non-applicant has now placed on the record to prove the charges levelled against him. He has relied upon the evidence recorded during the enquiry proceedings. The ld. representative has referred to before me AIR 1996 SC 1669 in support of his contention.

8. Arguing contra, the ld. representative for the applicant-association submits that once the enquiry is declared to be unfair, the evidence recorded during the proceedings of the enquiry cannot be considered by the Tribunal and that no charge is made out against the workman. He submits that the management has not produced the fresh evidence and the evidence recorded in the domestic enquiry cannot be now considered by the Tribunal. He places his reliance upon **1999 (1) LLJ SC 275.**

9. I have reflected over the rival contentions and have gone through the judicial verdicts referred to before me.

10. MW-1, Sh. Sitaram Aggarwal, the Manager of the non-applicant bank, has placed before the Tribunal the copies of the chargesheets Exhb. M-1 to M-4 issued to Sh. MC Mina, Sh. RK Chhajer, Sh. KP Mina and to himself also. Furthermore, he has stated in his affidavit that the charges levelled against these officers/officials were not similar, they were separately chargesheeted and the domestic enquiry was conducted accordingly. This is his whole statement as deposed in the affidavit.

11. On the other hand, the workman, WW-1, Sh. RK Bhargava in his affidavit has denied the withdrawal of the said amount by him.

12. It is evident from the perusal of the record that the non-applicant bank in order to justify the dismissal of the workman has not adduced the fresh evidence before the Tribunal so as to establish the charges levelled against the workman. The non-applicant has only produced the evidence to the extent of filing the copies of the four chargesheets issued to the officers/officials, wlio are alleged to have been involved in the said misappropriation.

13. The ld. representative for the non-applicant has relied upon **AIR 1996 SC 1669** the relevant portion thereof is quoted as under :—

"In the case of violation of procedural provision, the position is this : procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under 'no notice', 'no Opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. Take a case where there is a provision expressly providing that after the evidence of the employer/ Government is over the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The

prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle."

14. On account of this observation, the Id. representative has argued that merely on the ground that the copies of the said chargesheets were not furnished to the workman, it cannot be presumed that the prejudice was caused to the workman and that the evidence recorded by the Enquiry Officer, which is available on the record, may be taken into consideration and on the basis thereof, the charges against the workman are found to be proved.

15. In my humble opinion, this submission of the Id. representative is untenable since on account of the non-supply of the copies of the chargeshects, this Tribunal vide its order dated 25-4-2001 has found the domestic enquiry to be bad and the management was called upon to adduce the evidence on merits. The argument put forward by the Id. representative does not appear to be convincing, for the evidence recorded during the enquiry proceedings cannot be treated to be 'fresh evidence' and 'material on record' before the Tribunal.

16. The Id. representative for the applicant-association has referred the decision cited in **1999 (1) LLJ SC 275,** wherein the workman, a clerk in the medical college, was chargesheeted and the enquiry was conducted against him. The appointing authority after accepting the report of the Enquiry Officer dismissed the clerk from the service, an industrial dispute was raised and it was referred to the Labour Court, which came to the conclusion that the enquiry conducted by the management of the hospital was not fair and proper and the management was given an opportunity to produce the evidence. The management did not give any evidence but produced only one witness, who happened to be its Law Officer and submitted that it would rely upon the evidence already recorded during the enquiry proceedings. The Hon'ble Court, under these circumstances, has held as under :—

"The record pertaining to the domestic enquiry would not constitute "fresh evidence" as those proceedings have already been found by the Labour Court to be defective, Such record would also not constitute "material on record", as contended by the counsel for the respondents, within the meaning of Section 11-A as the enquiry proceedings, on being found to be bad, have to be ignored altogether. The proceedings of the domestic enquiry could be, and were, in fact, relied upon by the management for the limited purpose of showing at the preliminary stage that the action taken against the appellant was just and proper and that full opportunity of hearing was given to her in consonance with the principles of natural justice. This contention has not been accepted by the Labour Court and the enquiry has been held to be bad. In view of the nature of objections raised by the management ceased to be "material on record" within the meaning of Section 11-A of the Act and the only course open to the management was to justify its action by leading fresh evidence as required by the Labour Court. If such evidence has not been led, the management has to suffer the consequences."

17. It is manifestly clear that in the instant dispute, the management has not adduced the fresh evidence to justify the dismissal of the workman and has simply relied upon the evidence recorded during the proceedings of the enquiry, which as per the observation supra, cannot be taken into consideration by the Tribunal while deciding the dispute on merits. Except the evidence of MW-1, Sh. Sitaram Aggarwal, there is not frest evidence adduced against the workman which could establish the charges levelled agsinst him on merits. As stated earlier, the deposition of Sh. Sitaram Aggarwal is of formal nature. The facts of the referred case are squarely applicable to the dispute inhand and in view of the principle evolved by the Hon'ble Supreme Court, charges levelled aginst the workman cannot be deemed to be stablished in the lack of fresh evidence at the behest of the non-applicant.

18. On the basis of the aforesaid analytical discussion and in the light of the judicial verdict supra, it is held that claim of the workman prayed through the applicant association deserves to be allowed and an award is passed in favour of the applicant-association to this effect that the order terminating the service of the workman Sh. Rajesh Bhargava w.e.f. 13-3-92 is illegal and unjustified. The workman may be reinstated in service with its continuity and he will also be entitled to get the 50 per cent of the back wages along with other consequential benefits. The subsistence allowance drawn by the workman will be adjusted toward the amount admissible to him. The reference is answered accordingly.

19. Let a copy of the award be forwarded to the Central Government for publication under Section 17 (1) of the Act.

R. C. SHARMA, Presiding Officer

नई दिल्ली, 9 दिसम्बर, 2002

का. आ. 28.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-I धनबाद के पंचाट (संदर्भ संख्या 86/98) को प्रकाशित करती है, जो

केन्द्रीय सरकार को 4-12-02 को प्राप्त हुआ था।

[सं. एल-20012/684/97-आई.आर. (सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 9th December, 2002

S. O. 28.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 86/98) of the Central Government Industrial Tribunal I. Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of B. C. C. L. and their workman, which was received by the Central Government on 4-12-02.

[No. L-20012/684/97-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I DHANBAD

In the matter of a reference under Section 10(1)(d) (2A) of the Industrial Disputes Act, 1947.

Reference No. 86 of 1998

Parties :

Employers in relation to the management of M/s. B.C.C. Ltd.

AND

Their Workmen.

Present : Shri S.H. Kazmi, Presiding Officer.

Appearances :

For the employers	:	Shri H. Nath, Advocate.
For the workman	:	Shri D. Mukherjee, Advocate.
State	:	Jharkhand
Industry	:	Coal.

Dated, the 18th November, 2002

AWARD

By Order No. L-20012/684/97-IR (C-1) dated 10-9-1998 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of Sub-Sec. (1) and Sub-sec. (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management in not regularising Sri K.N. Dubey, Gen. Mazdoor, Expert Hostel to the post of a clerk in Environment Dept. of BCCL is legal & justified ? If not, to what relief the workman is entitled ?"

2. Precisely, the case of the sponsoring union is that the concerned workman being an employee of M/s. BCCL joined at its Headquarter at Koyla Bhawan after being released from Rajgir where he was posted earlier, vide Office Order dated 16-12-94 and he was posted at Expert Hostel, Karmik Nagar, as General Mazdoor where he resumed his duty on 17-12-94. It has been said that vide Office Order dated 9-6-95 the concerned workman was transferred to the office of P.M. (Admn) P&P Division, Koyla Bhawan from Expert Hostel, Karmik Nagar and he remained in that office at P&P Division till 23-11-1995. Further, it has been said that right from the date of joining at P&P Division the concerned workman started working as Diary Despatch Clerk as per the direction of the management continously to the satisfaction of all concerned. He thereafter was again transferred vide Office Order dated 23-11-95 and posted at World Bank Consultant at C.M.P.D.I.L. building in the Environmental Department and there also he had been working as a Clerk. It has also been said that the concerned workman represented before the management on several occasions for his regularisation as a Clerk and payment of wages as per NCWA, but no positive response was made. Further, the case is that Sri K. K. Malhotra, Head (Environment) World Bank Project initiated a note-sheet dated 11-11-95 wherein and whereby he proposed for posting of the concerned workman in place of Mrs. M. Mukherjee, Clerk and accordingly to concerned workman was posted in her place. Further, other notesheets dated 3-1-96 and 5/6th July, 1996 were initiated for regularisation of the concerned workman as Clerk. It has been said that the concerned workman had been working as Diary and Despatch Clerk in World Bank and P&P division for a considerable long period, but since he started insisting and representing before the management for his regularisation the management reverted him back to the post of General Mazdoor without assigning and reason and without following mandatory provision of Sec. 9A of the Industrial Disputes Act. Seeing no other alternative. It is said, the union on behalf of the concerned workman raised industrial dispute before A.L.C. (C) but the same ended in failure due to adamant attitude of the management whereafter finally the dispute was referred to this Tribunal for adjudication. Lastly, it is said that the action of the management in not regularising the concerned workman to the post of Clerk was illegal, arbitrary and unjustified.

3. The management's stand, on the other hand, as disclosed in its written statement is that the concerned workman was initially appointed and posted at Rajgir as casual Attendent and later on posted at Expert Hostel, Karmik Nagar on 17-12-94 as General Majdoor. Subsequently vide Office Order dated 23-11-95 he was transfered to Koyla Bhawan Environment Department to work in the World

Bank Cell in the same capacity/category. It has also been said that at no point of time the concerned workman was assigned the job as Clerk and during his tenure of service in the World Bank Cell he was never asked to do the work as Clerk nor he was ever designated as such. After the closure of the operation of the World Bank Cell (W.B.C.) under the Environment Department, it is said, the concerned workman was again tranferred back and was asked to perform his duty at Expert Hostel, Karmik Nagar. Further it has been said that throughout his service the concerned workman had worked as General Mazdoor either in the office or at Expert Hostel. Further the case is that the concerned workman requested the management to consider his case for appointment as clerk but his case was never considered by the management because of surplus manpower and further he was never considered for regularisation as he never worked as a clerk but worked as General Mazdoor.

In its rejoinder also the management has controverted or denied the several averments and allegations made in the written statement of the workman and reiterated its stand that the concerned workman never worked as a Clark and so he is not entitled to any relief whatsoever.

In the rejoinder failed to the written statement of the management, from the side of the workman also several statements or averments made on behalf of the management have been challenged and controverted and it was again emphatically asserted that on account of his continuous working for a long period as a clerk the concerned workman is entitled to be regularised on the said post and denial of the management to that effect is unjust and improper.

4. In view of the stand taken on behalf of the parties as noticed above it is apparent that the moot question involved that requires consideration is as to whether at all during the relevant period the concerned workman worked as a clerk under the management or not. If yes, then having worked for a considerable long period as a clerk he deserves to be regularized on the said post or not.

5. In support of their respective strands both the sides have led their oral as well as documentary evidence and those would be looked into and considered in course of the discussions made hereinafter.

6. It is obvious from the above that the definite case of the management is that the concerned workman at no point of time either in the P&P Division or in the Environment Department of the management worked as a clerk. According to its firm stand at all the places of his posting the concerned workman had been discharging the same nature of duty of a General Manager and he was never assigned the job and was never asked to perform the duty of a clerk and so the entire claim of the concerned workman as regards his continuous working as a clerk during the relevant period is wrong and baseless and consequently he is not entitled to any relief whatsoever.

A very firm and consistent stand of the workman, on the other hand is that right from 9-6-95 when he was transferred to the P&P Division, Koyla Bhawan from Expert Hostel, Karmik Nagar, he had been performing the duties there as a clerk and by order dated 23-11-95 when again he was transferred and was posted at Expert Department there also continuously he worked as a clerk till his illegal reversion by the management as after having worked for a considerable long period i.e. more than a year, he had been pressing the management for his regularisation. Further the workman's stand is that he performed his duty as a clerk at both the aforesaid place as per the direction and authorisation of the management and so it is absolutely wrong and unjustified on the part of the management to deny the said fact just in order to frustrate the rightful claim of the concerned workman.

Considering the aforesaid definite stand of the parties firstly it would be pertinent to go into the aspect and to consider as to whether on the basis of the materials collected in course of the proceeding the concerned workman can be taken to have worked as a clerk for any period whatsoever under the management or not.

7. Out of the several documents filed on behalf of the workman Ext. W-2 is an Office Order dated 22/23-11-95 under the signature of P.M. (Admn.) P&P by which the concerned workman and two others were deployed to discharge their duties under the Head (Environment) World Bank Cell at level-V, CMPDIL building with the approval of the competent authority and it is clearly mentioned therein that the concerned workman was deployed for office work. Ext. W-3 is a copy of note-sheet dated 10-11-95 by which the concerned authority was requested for providing the substitute for working in place of three employees for performing the jobs as steno, clerk and peon respectively. It appears that on such request being made the concerned authority, namely, P.M., P&P made his endorsement on the same note-sheet itself to the effect that K.N.Dubey, the concerned workman may be posted in place of Smt.M. Banerjee who has been working as a clerk and who was assigned different jobs. Further it was ordered to be placed for final approval. Two other relevant documents filed and exhibited on behalf of the workman are marked Exts. W-1 and W-1/1 and those are also relevant for the present purpose. Ext. W-1 is a notesheet dated 3-6-96 initiated by K.K.Malhotra, Head (Environment) wherein it has been indicated that pursuant to the transfer of the concerned workman in Environment Department (W.B.C.), he reported for his duty on 23-11-95 and since then he has been performing the duty of Diary and Despatch Clerk and in addition to the said job he was also looking after other miscellaneous job of the office. It was further indicated that the work performance of the concerned workman was quite satisfactory and he was found to be a sincere worker. It was also acknowleged that

before joining Environment Department he was working in Director (Personnel), P&P Secretariat. It is also mentioned that as the concerned workman had submitted his application regarding change of designation, therefore, P.M. (Admn.) P&P Division is requested to give his opinion regarding performance of his work and the type of job he was doing under his control so that his application can be forwarded to the competent authority for necessary action. Ext. W-1/1 is yet another note-sheet dated 5-7-96 initialed by K.D. Prasad, P.M. (Admn.) P&P Division. It is indicated therein that earlier the concerned workman was doing his duty in Expert Hostel, but thereafter due to shortage of clerical staff and creation of separate world Bank cell under the Directorate of P & P , he was asked to resume his duty in the office of D(T) PP from the Expert Hostel on 8-6-95. It also finds mentioned that the concerned workman worked under the directorate of P&P upto 23-11-95 and thereafter he was deployed in the office of the World Bank consultant at C.M.P.D.I.L building. The said authority has further mentioned therein that the concerned workman has requested to regularise him as an office clerk and the observed that his performance as clerk in World Bank Cell was satisfactory and further he has rendered service in the Directorate of P&P including World Bank office for more than one year. Thereafter lastly recommendation was made that keeping in view his working experience and also his qualification the concerned workman may be considered for being regularised as Assistant in clerical Gr-III.

The authenticity and genuineness of the aforesaid two documents are not under challenge and significantly those were proved by the management's own witness (MW-I). In course of his evidence the said witness has identified the signature of those two authorities of the management upon those two note-sheets (Ext. W-1 and W-1/1).

Therefore, from the contents of the aforesaid documents marked Exts. W-I and W-1/I it becomes apparent that earlier the concerned workman was working at Expert Hostel but thereafter was transferred to the Directorate of P&P Division where he had been working as Diary and Despatch Clerk form 9-6-95 to 23-11-95 and subsequently again he was transferred to the Environment Department at C.M.P.D.I.L building and there also he performed the same nature of job as a clerk. It is also apparent from the office order date 22/23-11-95 (Ext. W-2) and the note-sheet date I0-11-95 (Ext. W-3) that the deployment of the concerned workman in those departments were for discharging the work as a clerk.

So far as oral testimonies of the management's witnesses are concerned it appears that MW-1 was produced to prove the attendance chart of the concerned workman prepared by him for the concerned period. The said chart is marked Ext. M-I. The attendance of the concerned workman in P&P Division has been shown from 13-7-95 to 22-11-95. It has not been clarified by this witness as to why attendance was marked from 13-7-95. When even as per the aforesaid document the concerned workman is said to have resumed his duty in the said office from 9-6-1995 and worked upto 23-11-95. In course of his cross-examination upon question being asked he has said that he cannot say if the concerned workman has worked as Diary and Despatch Clerk. from 8-6-95 to 23-11-95. So at one place he has proved the said document which mentions about the aforesaid dates and at another he has expressed his ignorance regarding the working of the concerned workman between 8-6-95 to 23-11-95 as Diary Despatch Clerk. Even from this document (Ext.M-1), however, it is apparent that between 13-7-95 to 8-8-96 the concerned workman had put in the total attendance of 302 days and as it has already been observed above on the basis of aforesaid document during the said period the concerned workman worked at those two places continuously as Diary and Despatch Clerk. This ducument (Ext.M-I) rather supports the workman's stand as regards his continuous performances at those two different places during the relevant period as Clerk. In course of his cross-examination, as mentioned above, the aforesaid two documents (note-sheets) were marked Ext. W-I and Ext. W-1/1. At one place he has stated that for the post of clerk minimum educational qualification is matriculate and he is also a matriculate presently working as a clerk at Koyla Bhawan, Dhanbad.

According to the management's second witness (MW-2) the concerned workman had worked under him from 2.8.96 to 22.5.99 as General Mazdoor. He has said that the concerned workman simply worked as General Mazdoor and never worked as clerk. During his cross examination he has admitted the fact that the concerned workman worked at P&P Department from 9-5-95 to 23-11-95. this '9-5-95' appears to be a typographical error as everywhere it has been mentioned as '9-6-95'. He has denied the suggestion that during the revelant period the concerned workman was working as Diary Despatch Clerk. He thereafter has admitted the fact that the concerned workman was transferred to the Environment Department of World Bank project of C.M.P.D.I.L. office. it is evident from the evidence of the witness that repeatedly or time and again he has made the statement that the concerned workman always worked as a General Mazdoor and never worked as a clerk and if the aforesaid documents, wherein the workings of the concerned workman during the aforesaid period are mentioned are to be taken into account then it becomes apparent that this witness by making the aforesaid statement desparately tried his level best to support the case of the management that the concerned workman never worked as a clerk. It appears that during his cross-examination when his attention was drawn to the note-sheet initiated by Sri Malhotra, he replied that he does not know if Sri Malhotra had initiated the note-sheet to post the concerned workman in place of Mrs. Mukherjee and on the basis of that note-sheet he was posted in place of Mrs. Mukherjee.

Considering the materials as noticed above the evidence of this witness or the statements made by him denying the facts as regards performance of the concerned workman as a clerk cannot be believed or relied upon. Certainly his evidence does not inspire confidence.

The workman (WW-I), on the other hand, in his evidence has supported his case in all material particulars. He has stated clearly that on 9-6-95 from Expert Hostel he was shifted to Planning and Project Division and remained posted there till 23-11-95 where he was working as Diary, Despatch and Receipt Clerk. According to him, from there he was again transferred to Environment Department sponsored by World Bank and there also he worked as Diary and Despatch Clerk. Further, according to him, on 10-11-95 Mr. Malhotra, the Head of the concerned department had initiated a note-sheet to the effect that in place of Mrs. Mitali Mukherjee,who used to work as a clerk, he should be appointed. Later again on 3-1-96, according to him, Mr. Malhotra initiated a note-sheet for the regularisation of his service as a clerk. He has proved the aforesaid two documents in course of his evidence which are marked Exts.W-2 and W-3. He has said that on several occasions he made representations before the management to regularise him as a clerk but instead of regularising his service he was being reverted back to his earlier post of General Mazdor Cat.I and that too without any notice under Sec.9A of the I.D.Act. In course of his cross-examination he has challenged and denied the attendance shown in Ext.M-1. He has said that he has completed his B.A. Part II examination but is not a graduate. He dienied the suggestion that for being appointed as a clerk one is required to be a graduate and further denied the suggestion that he never worked regularly as a clerk. Quite evidently, all the statements made by the concerned workman during his evidence find full support from the aforesaid material documents. (Exts.W-1 to W-3). On the basis of all the aforesaid, there does not appear to be any difficulty in arriving to the conclusion that though initially the concerned workman was designated as General Mazdoor and worked as such also but between the period from 9-6-95 to 23-11-95, having been transferred to Directorate P&P Secretariat he worked as Diary and Despatch Clerk and thereafter having been transferred to the Environment Department by order dated 23-11-95 he went on woking continuously as Diary and Despatch Clerk there also and as per the document of the management (Ext.M-1) he worked there till 8-8-96 and thereafter reverted back to his earlier post of General Mazdoor by order dated 9-8-96 and so quite evidently between 9-6-95 to 8-8-96 the concerned workman continuously worked as a clerk and put in attendance of more than 240 days. It is also clear that realising genuineness of the claim of the concerned workman the competent authorities on different occasions initiated the note-sheet also recommending his regularisation but even then no positive outcome could be seen. On the face of the materials available on the record it can well be concuded that there does not appear to be any substance in the stand taken by the management that, in fact, the concerned workman never worked as a clerk rather he went on working althrough as a General Mazdoor. Though the management has taken this stand but has miserably failed to establish the same.

8. The claim of the concerned workman for his regularisation cannot be taken to be a claim for his promotion. Here it is not denied that earlier he was posted as General Mazdoor but later he was transferred to or shifted to two different places and was assigned the job of a clerk by the management. On the basis of such assignment, as it is evident from the aforesaid documents, he went on performing the job as a clerk till his reversion to his original post sometime in the month of August, 1986. According to the workman as he had worked as a clerk for a continuous period of more than one year he should have been regularised on the said post but instead of doing so when he started making the demand for the same he was reverted back to his original place. So the present case cannot be taken to be a case of promotion rather it is a case where regularisation has been claimed on the basis of having worked on a particular post for a considerably long period. In this context it would be partinent to take note of a decision of Hon'ble Supreme Court reported in 1994 AIR (SC) 1683. In that case the demand of the workman who was officiating in the higher grade was for classification as permanent or temporary on rendering of continuous service in higher grade. The Industrial Tribunal was of the view that such a demand was for promotion which is a managerial function and beyond the reach of adjudication. The Hon'ble Supreme Court held that the Tribunal mis-interpretated the demand and reached a wholly untenable conclusion that the demand was for promotion. It further held that the demand to confirm an employee employed in a acting capacity in a grade would unquestionably be an industrial dispute. Again in the aforesaid context it would also be apt to take note of a decision of Hon'ble Patna High Court reported in 1994(I)PLJR-377 wherein a workman claimed regularisation on the basis of having worked for 240 days or more in a year. While interpreting the term "regularisation" the Hon'ble Court held that the term "regularisation" means to make "regular" which implies that the action was irregular and the same is being cured. Further, the Hon'ble Court held that the word "regular" or "regularisation" are terms calculated to condone any procedural irregularity and are meant to cure defect and by regularising in appointment the procedural or any other irregularity is condoned for equitable reason.

9. Considering such judicial pronouncement, in my view, even if the action of the management was irregular in the sence that dispute having been designated as General Mazdoor the concerned workman was asked to perform the job of a clerk for a long period, then that irregularities can well be condoned for equitable reason in the shape of

regularising the workman on the said job on which he had been working for considerable long period particularly when he possessed the educational qualification and sufficient experience also for the said post.

10. It is obvious from the discussions made hereinabove that the concerned workman though was designated initially as General Mazdoor but the management took work from him of a clerk and described him also as Diary and Despatch Clerk for a long period and upon the direction of the management or having been assigned the said job the concerned workman went on working as a clerk continuously for more than one year. Instead of making him regularised on the said post as regards which the recommendations were also made by the superior authorities from time to time, the management reverted him back and strangely when the concerned workman raised the present dispute for his regularisation the management has altogether denied the fact regarding the working of the concerned workman as a clerk during the said period. In order to frustrate the claim of the concerned workman it came out firmly with the stand that at no point of time or for any period whatsoever the concerned workman never worked under the management as a clerk. Certainly it was too much for the management to adopt such an attitude even on the face of several documents and indeed such conduct or attitude of the management comes within the purview and ambit of the term 'unfair labour practice'. Much belatedly after taking the work of a clerk from the concerned workman for a considerable long period the management cannot get away merely by taking the aforesaid unsubstantiated and unreasonable stand at this stage.

11. Thus, in view of all the aforesaid it is finally concluded that the concerned workman deserves to be regularised as a Clerk in Clerical Grade-III and to avail all the benefits which are being availed by a regular workman of the same grade.

12. The award is, thus made as hereunder :

The action of the management in not regularsing the concerned workman, K. N. Dubey, General mazdoor to the post of a clerk in Environment Department of M/s. BCCL is not justified and the concerned workman, as such, deserves to be regularised as a Clerk in Clerical Grade-III either for discharging the same nature of work which he had been performing at the time of his reversion or any other work of the same clerical grade either in Environment Department or elsewhere. Consequently the management is hereby directed to act accordingly within 30 days from the date of publication of the award.

However, there would be no order as to cost.

S. H. KAZMI, Presiding Officer

नई दिल्ली 9 दिसम्बर, 2002

का.आ. 29.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.पी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण I, मुम्बई के पंचाट (संदर्भ संख्या 11/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4/12/2002 को प्राप्त हुआ था।

[सं. एल-30012/55/98-आई. आर.(सी.1)]

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 9th December, 2002

S.O. 29.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 11/99) of the Central Government Industrial Tribunal-I, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BPCL and their workman, which was received by the Central Government on 4-12-2002.

[No. L-30012/55/98-IR (C-1]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

Present:

SHRI JUSTICE S.C. PANDEY,
Presiding Officer

REFERENCE NO. CGIT-11/1999

Parties : Employers in relation to the management of Bharat Petroleum Corporation Ltd.

And

Their Workmen

Appearances :

For the Management : Shri Nabar, Advocate

For the Workman : Shri. R.S. Pai, Advocate

State : Maharashtra

AWARD

Mumbai, dated the 26th day of November, 2002

1. This is a reference made to this tribunal by the Central Govt. in exercise of its power under sub-section 1(d) of Section 10 of the Industrial Dispute Act, 1947, read with section 2A thereof. The terms of the reference are as follows :

"Whether the action of the management of Bharat Petroleum Corporation Ltd., Mumbai in dismissing the services of Mr. Abhimanyu M. Patil, Operator

w.e.f. 11-1-1996 is legal and justified? If not, what relief the workman concemed is entitled to?"

2. Both the learned counsel appearing for the parties agreed that this reference has now become infructuous as by order dated 10th April, 2002 the representation of the workman against the order dated 11th January, 1996 has been considered by the Chairman and Managing Director of the Bharat Petroleum Corporation Ltd. The workman has been given fresh appointment by order dated 24-6-2002. Both the counsel states that in view of subsequent event this reference has become infructuous. A copy of the order of appointment and posting has been filed before this tribunal. The aforesaid document shall form part of record of this case and be kept on record as such.

3. Accordingly, the aforesaid reference is answered by saying that the dispute referred to this tribunal does not survive for giving an answer on merits of this reference. Accordingly, this reference is disposed of.

S.C. PANDEY, Presiding Officer

नई दिल्ली 11 दिसम्बर, 2002

का.आ. 30.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंगापुर एअर लाइंस लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण I, चेन्नई के पंचाट (संदर्भ संख्या 51/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-12-2002 को प्राप्त हुआ था।

[सं. एल-1101/51/2000-आई. आर. (सी.1)]

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 11th December, 2002

S.O. 30.—In pursuance of section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 51/2001) of the Central Government Industrial Tribunal Chennai, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Singaore Airlines Ltd. and their workman, which was received by the Central Government on 9-12-2002.

[No. L. 11012/51/2000-IR (C-1]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM-LABOUR COURT, CHENNAI

Wednesday, the 20th November, 2002

PRESENT: K. KARTHIKEYAN, Presiding Officer

INDUSTRIAL DISPUTE NO. 51/2001

(Tamil Nadu State Industrial Tribunal I.D. No. 70/2000)

(In the matter of the dispute for adjudication under clause (d) of sub-section(1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) between the workman Sri V. Vijayan and the Management of Assistant Station Master, Singapore Airlines Ltd., Chennai.)

BETWEEN

SRI V. VIJAYAN : I Party/Workman

AND

The Assistant Station Master, Singapore Airlines Ltd., Chennai.. : II Party/Management

Appearance :

For the Workman : M/s. V. Prakash & P. Ramkumar & A. Lakshni, Advocates.

For the Management : M/s. King & Partridge, Advocate

The Govt. of India in the Ministry of Labour in exercise of powers conferred by Clause (d) of Sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the concerned dispute for adjudication vide their Order No. L-11012/51/2000/IR (C-I), dated 07-03-2000:

This reference has been made earlier to the Tamil Nadu State Industrial Tribunal, Chennai where it was taken on file as I.D No. 70/2000. When the matter was pending enquiry in that Tribunal as per the orders of the Central Government , Ministry of Labour this case has also been transferred from the file of Tamil Nadu State Industrial Tribunal to this Tribunal for adjudication. On receipt of records from that Tamil Nadu State Industrial Tribunal, this case has been taken on file as I.D No. 51/2001 and notice were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 24-1-2001 with their respective parties and to prosecute this case further. Accordingly, the learned counsel on either side along with their respective parties have appeared and prosecuted this case. The claim statement of the I Party/ workman was filed, when this matter was pending before the Tamil Nadu State Industrial Tribunal itself. After the transfer of this case to this Tribunal, the II Party/Management had filed the counter statement and the xerox copies of the documents on either side also have been filed.

Upon perusing the claim statement, counter statement, the other material papers on record, after hearing the arguments advanced by the learned counsel for the

II party/Management and this matter having stood over till this date for consideration, this Tribunal has passed the following :—

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt. for adjudication by this Tribunal is as follows :—

"Whether the action of the management of Singapore Airlines Ltd. Chennai in terminating the services of the workman Sri V. Vijayan w.e.f. 5-2-1998 is justified? If not, to what relief he is entitled ?"

2. The averments in the claim statement filed by the I Party/Workman Sri. V. Vijayan (hearinafter refers to as petitioner) are briefly as follows :—

The Petitioner joined the services of the Singapore Airlines Ltd. II Party/Management (hereinafter refers to as Respondent) in the month of April, 1990 as a cargo assistant. He has been working in the Madras Airport for doing the work relating to both passenger and cargo transport. He does the work of wheel chair assistance for handicapped passengers assisting in the ticket checking counter for taking the baggage, putting the baggage tag on and putting them on conveyor belt and ensuring proper movement of these articles on the conveyor belt and thereafter removing the same from the conveyor belt and doing the baggage make up i.e. ensuring proper loading of these baggage into the containers. He has also done the ground duties i.e. ramp work, high loading and bulk loading and when flight lands he does the break up of the baggage and ensuring that they are loaded into the containers for the same to be picked up by disembarking passengers. He has also done the special handling work in respect of first class and business class passengers. With regard to cargo flights he did loading and off loading. For the aforesaid work, the Petitioner has been employed continuously without any break for more than 480 days within a period of 24 calendar months. He was employed continuously from April, 1990 till the date of his termination on 5-2-1998. On 5-2-98 when he reported for duty he was denied employment by the Respondent/Management without any reason. Thereafter, he approached the Respondent/Management several times to reinstate him but the management refused to do so. The Petitioner was terminated form service without any notice and solely with a view to deny him the permanency and other labour welfare benefits to which he is entitled to under the various labour welfare legislations. The termination of the Petitioner w.e.f. 5-2-98 is unsustainable. The impugned termination of the Petitioner from service is arbitrary, illegal and capricious. It amounts to retrenchment within the meaning of Section 2(00) of the Industrial Disputes Act, 1947. Further no notice or wages in lieu thereof. Nor any retrenchment compensation was paid to the Petitioner before the termination of his service. It is a violation of section 25N and 25F of the Industrial Disputes Act, 1947. The Respondent/Management is not justified in refusing to confer permanency on the Petitioner, even though the work done by him was permanent and perennial in nature. The petitioner has a blemish less record of service. His last drawn wages is Rs. 1200/-p.m. The permanent employees of the Respondent/Management in the last grade are being paid Rs 14,000/-p.m. It is, therefore prayed that this Hon'ble court may be pleased to pass an award directing the Respondent/Management to reinstate the Petitioner and regularise and absorb him in the services of the Respondent/Management and pay him all past benefits as was paid to the permanent workman with all other consequent benefits including seniority, back wages etc.

3. The averments in the counter statement filed by the II Party/Management, Singapore Airlines Ltd. (hereinafter refers to as Respondent) are briefly as follows :—

A Ground Handling Agreement was entered into between M/s. Singapore Airlines and M/s. Air India in the year 1988, which was renewed from time to time. The Annexure B clause 4.2 of the agreement states that M/s. Air India, the handling company shall provide service personnel for handling baggage in the Respondent's aircrafts. Under above agreement, the Respondent is only referred to as the 'Carrier' and Air India as 'Handling Company'. Occasionally, when there are over crowding of passengers or arrival of baggage and if a personnel provided by Air India for handling baggage failed to report in time or absent, the Respondent will engage Casual Labourers purely on temporary basis for clearance of baggage, which will amount to an implied contractual engagement. Neither the Petitioner/Workman nor similarly placed persons claiming employment with the Respondent have been engaged on regular basis. The Respondent do not maintain any records relating to temporary/casual engagements, since such engagements arise occasionally. Such temporary engagement of casual Labourers by the Respondent occasionally will not vest any right on the Petitioner/Workman to claim benefits under Industrial Disputes, Act, 1947 alleging contravention of Section 25F and 25N of the said Act. Temporary, contractual engagement of casual Labourers if at all will only fall within the ambit of section 2(oo) (bb) of the Industrial Disputes Act, 1947 which is an exception to retrenchment. Hence, the non-employment of the Petitioner/Workman did not amount to retrenchment and he cannot claim any relief from the Respondent/Management under Industrial Disputes Act, much less retrenchment compensation or re-employment. Inasmuch as, personnel for handling baggage for the aircrafts are provide by Air India, this Respondent/Management is not liable to give employment to the Petitioner. Neither the Petitioner nor similarly placed persons before the authority were engaged in any vacancy or post. There is no vacancy or post available with the

Respondent to offer employment to the Petitioner/ Workman. The claim of the Petitioner/Workman is stale barred by leaches and as such the Petitioner is not entitled to seek benefits under Industrial Disputes Act from the Respondent. It is false to contend that the Petitioner joined the services of the Respondent/Management as a cargo assistant in the month of April, 1990 and the same is denied. The Petitioner is engaged occasionally to handle over crowding of passenger or arrival of baggage. Therefore, it is incorrect to state that he was given duty as a loader to load the baggage in the aircraft. It is false to state that he was asked to work for baggage identification do the work of wheel chair assistance for handicapped person etc. It is denied that the petitioner did the work of high loading ,bulk loading special handling in respect of 1st class and business class passengers. It is denied that the petitioner had completed 480 days of continuous service in a period of 24 calendar months from April, 1990 to 5th February, 1998. Even assuming so, the petitioner was engaged on a purely temporary and casual basis to meet the exigencies as mentioned earlier which will amount to an implied contract at the best. Hence such engagement falls within the definition of section 2(oo)(bb) of Industrial Disputes Act, 1947 and the question of issuance of notice and illegal termination does not arise much less retrenchment. The petitioner has come forward with his petition alleging non-employment of the Respondent/Management with an ulterior motive and malafide intention only to harass the Respondent for seeking monetary benefits. The alleged non-compliance of section 25F and section 25N of the Industrial Dispute Act, 1947 were all untenable and cannot be sustained. There is neither private of contract nor nexus of employee and employer relationship between the petitioner and the management. The averments by the petitioner in his claim petition are neither sustainable on law nor on facts. It is denied that the petitioner's last drawn wages was Rs. 1200/- per month. It is false and incorrect to state that the petitioner had rendered 480 days of continuous service in a period of 24 calendar months. The Petitioner was never engaged on a regular basis. The claims are all ill-founded, misconceived, untenable and consequently, the Petitioner is not entitled to any relief much less reinstatement in service, back wages, continuity of service attendant benefits. Hence, it is prayed that the claim of the Petitioner may be dismissed.

4. When the matter was taken up for enquiry on 17.09.2002, the counsel for the II Party/Management alone was present, neither the I Party nor his counsel on record present. No oral or documentary evidence was let in on either side. After it was reported by the learned counsel for the II Party/Management that they have no oral evidence, the evidence was closed and posted for arguments for the counsel on either side. After the case has been adjourned twice for advancing the arguments of learned counsel on either side and was taken finally on 10-10-2002, the counsel who appeared for the II Party/Management had advanced his arguments and as the counsel for the I Party was not present to advance his arguments, it was held as no arguments for I Party and it was reserved for orders.

5. The point for my consideration is:—

"Whether the action of the management of Singapore Airlines Ltd., Chennai, in terminating the services of the workman Sri V. Vijayan w.e.f. 05.02.1998 is justified? If not, to what relief he is entitled?"

Point:-

It is the case of the Petitioner that he joined the services of the Singapore Airlines Ltd. as a cargo assistant in the month of April, 1990 and he was illegally denied employment w.e.f. 05.02.1998 and that he has been employed continuously for more than 480 days within a period of 24 calendar months and that he was not paid retrenchment compensation and he was not given any notice in writing or wages in lieu of notice and hence such termination is bad for non-compliance of Section 25F of Industrial Disputes Act. The Respondent/Management would contend that a ground handling agreement. Was entered into between the Respondent and the Air India in the year 1988 which was renewed from time to time and that M/s. Air India, the Handling Company shall provide service personnel for handling baggage in the Respondent's Aircraft and that occasionally when there are over crowding of passengers or arrival of baggage and if personnel provided by the Air India for handling baggage failed to report in time or absent, the Respondent will engage Casual Labourers purely on temporary basis for clearance of baggage which would amount to an implied contractual engagement and hence, the workman like Petitioner have never been engaged on a regular basis and such temporary engagement of Casual Labourers by the Respondent occasionally will not vest any right on the Petitioner/Workman to claim benefits under Industrial Disputes Act alleging contravention of Section 25F of Industrial Disputes Act. It is further alleged that the non-employment of the Petitioner/Workman did not amount to retrenchment and he cannot claim any relief from the management under the Industrial Disputes Act much less retrenchment compensation or re-employment. It is also alleged by the Respondent/Management that the temporary contractual agreement for Casual Labourers if at all will only fall within the ambit of Section 2(oo) (bb) of the Industrial Disputes Act, 1947 which is an exception to retrenchment. Hence the Petitioner cannot claim any relief from the Respondent/Management much less retrenchment compensation or re-employment. In support of the contention of the Respondent/Management in their Counter Statement, a xerox copy of the ground handling agreement entered into between the Singapore Airlines and Air India has been filed into Court, after furnishing a copy of the same to other side. It is not disputed on the side of the Petitioner. The Petitioner has not chosen to let in oral or documentary evidence in support of his contention in the

Claim Statement. But, he has filed Xerox copies of two temporary passes issued by the Airport Security Authority dated 22-06-93 and 21-12-93 respectively each for the period of three months. In those documents, it is mentioned as temporary pass and the Petitioner Sri Vijayan was allowed in area of Terminal II Airport Cargo Complex for the work of Cargo Assistant under that temporary passes. Except these two documents, no other document has been filed by the Petitioner in support of his contention in the Claim Statement about his service as cargo assistant under the Respondent/ Management for the alleged period from April, 1990 to 5th February, 1998. These temporary passes also do not disclose that he was an employee under the Respondent/ Management Singapore Airlines. In the Claim Statement also the Petitioner has not given any particulars about the days he worked under Respondent/Management as a cargo assistant and on other capacities as a workman. He has simply stated in his Claim Statement that he has been employed continuously without any break for more than 480 days within a period of 24 calendar months. Except filing the Xerox copies of two temporary passes each for a short of period of three months issued to him by the Bureau of Civil Aviation Security for the period mentioned therein, the petitioner has not proved his plea about his alleged period of service under the respondent. For his averment in the Claim Statement that he attended the work mentioned in the Claim Statement and that he worked continuously without any break for more than 480 days within a period of 24 calendar months, he has not given any substantial evidence. It is the specific contention of the Respondent in the Counter Statement that the persons like the Petitioner were engaged by the Respondent, Singapore Airlines Ltd. as Casual Labourers purely on temporary basis for clearance of baggage as and when occasion arises and that the Respondent/Management used to engage Casual Labourers on daily wage basis at the time of heavy arrivals and departures of flights and such employment they used to make on temporary basis and they never used to engage them continuously for a period of 240 days in 12 calendar months. So from these contentions of either parties, it can be said that the allegation of the Petitioner that he had worked for more than 480 days continuously within a period of 24 calendar months is not correct, when the Petitioner has raised this claim to avail the relief prayed for in the claim petition from the Respondent/Management, he has to prove his plea in the Claim Statement with acceptable legal evidence that he had been employed continuously without any break for more than 480 days within a period of 24 calendar months. Thus, the Petitioner/Workman has not discharged his burden, though the onus is on him to prove that he had worked 480 days continuously in a period of 24 calendar months. The Respondent in their Counter Statement has stated that the Respondent/Management emphatically denies that the Petitioner has completed 240 days of continuous service in a period of 12 calendar months. The learned counsel for the Respondent had also argued that the Petitioner has failed to prove with acceptable legal evidence that he had worked for 240 days in a period of 12 calendar months/480 days continuously for a period of 24 calendar months. Hence, he cannot ask for the relief of reinstatement into service as that of a permanent workman. He had also relied upon a decision of Supreme Court reported as 2002 FACTORIES JOURNAL REPORT Vol.100 Pg-397 between RANGE FOREST OFFICER and S.T. HADIMANI in that case The Supreme Court has held that "since the claim of the workman that he had worked for 240 days was denied by the management it is for the workman to lead evidence to show that he had in fact, worked for 240 days and that in the absence of proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for that period, it cannot be concluded that the workman had in fact, worked for 240 days and the onus is on the workman to proye the claim with sufficient records and mere an affidavit is not sufficient." The decision of the Supreme Court in this case is quite applicable to the present case also. It is further argued by the learned counsel for the Respondent that the averment in the Counter Statement of the Respondent to that effect that the Respondent/Management had entered into ground handling agreement with Air India and in pursuance of the same, Air India has taken care of the ground handling work, which the Petitioner was said to have attended as cargo assistant, and the same has not been denied by the Petitioner. Though the period of work alleged by the Petitioner in his Claim Statement has been emphatically denied in the Counter Statement of the Respondent/Management, the Petitioner has not chosen to prove his alleged period of service with acceptable legal oral or documentary evidence. It is further argued by the learned counsel for the Respondent that the people like the Petitioner/Workman have been engaged as a casual employees at the time of exigencies to meet the requirement or personnel for handling baggage for aircrafts during the period of over crowding of passengers or arrival of baggage and the personnel provided by Air India for that work failed to report in time or remains absent. This has not been disputed by the Petitioner as incorrect or false. The learned counsel would further contend that such casual employment would amount to only implied contractual agreement, which squarely comes under section 2(oo)(bb) of Industrial Disputes Act, 1947 which is an exception to retrenchment and hence there was no retrenchment in the case of the Petitioner's non-employment and he cannot claim any relief from the Respondent/Management under the Industrial Disputes Act, 1947 and that he cannot claim retrenchment compensation or re-employment. He would further argue that mere pleadings of the Petitioner in his Claim Statement that he was employed under the Respondent/Management for a particular period is not suffice and as per the decision of Madras High Court in a case reported as 2001 4 LLN 903 the Petitioner has to prove the pleadings by letting sufficient evidence. In the above

cited case, the Hon'ble High Court of Madras has held that "the allegation which was not pleaded and even if evidence is adduced in that regard cannot be examined because the other side had no notice of it and if such evidence is entertained it would tantamount to granting unfair advantage to the party who had not pleaded his case properly". So from this, it is seen that argument advanced by the learned counsel for the Respondent/Management can be accepted as correct as there is no evidence to show in this case on the side of the Petitioner that he has been employed under the Respondent/Management Singapore Airlines and was in continuous employment for more than 480 days in a period of 24 calendar months. So, from all these things, it is seen that the Petitioner cannot ask for reinstatement in service. From the available evidence, it is seen that the Petitioner was engaged only as a casual workman by the Respondent/Management as and when occasion arises. So by the very nature of the employment of the Petitioner, he has no assurance that he would be employed by the Respondent/Management for any specified duration. The persons like Petitioner temporary employment could not be for any period for which they can look forward to assured work from the employer. It is held by the High Court of Madras in a case reported as 2001 3 LLN 807 between L & T Mc-NEIL LTD. MADRAS and PRESIDING OFFICER, MADRAS LABOUR COURT AND ANOTHER that "casual workmen have only to report each day and hope that employment would be provided to them on that day. Their not going to the place of employer will not result in any penalty as they are not assured of work daily. This kind of employment, therefore, cannot be treated on par with the temporary and permanent employment. The employers are not bound to provide work to casual workmen unless they choose to and there is work for the day. Directing reinstatement of casual workman who had worked as such, for a relatively short period of time, would only mean that their names would once again be included in the list of casual workmen putting them in the same position they were earlier, where they would only report for the employment with the hope being providing with the work and no more." This observation of the High Court of Madras in the above cited case is applicable to the facts of this case also.

6. The learned counsel for the Respondent/ Management had argued that the Petitioner has not at all pleaded in the Claim Statement that prior to the termination he had worked for 240 days continuously but it is his plea that he had worked 480 days in 24 calendar months and the same also has not been proved and that the Petitioner is not entitled for any permanent employment. Since he was engaged only as a casual worker as and when required due to the exigencies the question of termination does not arise and hence they are not entitled to the relief of reinstatement also as a permanent employee of the Respondent/ Management.

7. On the basis of the available materials in this case, the argument advanced by the learned counsel for the Respondent/Management can be accepted as correct. Under such circumstances, it can be concluded that there is no question of termination of the service of the Petitioner by the Respondent/Management and the non-employment of the Petitioner does not amount to any retrenchment. Hence, it can be concluded that the non-employment of the Petitioner/Workman Sri V. Vijayan by the Respondent/ Management, Singapore Airlines Ltd., Chennai is justified and hence the concerned workman is not entitled to any relief. Thus, the point is answered accordingly.

8. In the result, an Award is passed holding that the I Party/Workman Sri V. Vijayan is not entitled for any relief. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 20 November, 2002.)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined :—
on either side : None
Exhibits marked:—
On either side : Nil

नई दिल्ली 11 दिसम्बर, 2002

का.आ. 31.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंगापुर एअर लाईंस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पंचाट (संदर्भ संख्या 52/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-12-2002 को प्राप्त हुआ था।

[सं. एल-11012/54/2000-आई. आर. (सी.-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 11th December, 2002

S.O. 31.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 52/2001) of the Central Government Industrial Tribunal Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Singapor Airlines Ltd. and their workman, which was received by the Central Government on 9-12-02.

[No. L. 11012/54/2000-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 20th November, 2002

PRESENT:

K. KARTHIKEYAN, Presiding Officer

INDUSTRIAL DISPUTE NO. 52/2001

(Tamil Nadu State Industrial Tribunal I.D. No. 69/2000)

(In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Workman Sri D. M. Shankar and the management of Assistant Station Master, Singapore Airlines Ltd., Chennai.)

BETWEEN

Sri D. M. Shankar : I Party/Workman

AND

The Assistant Station Master, : II Party/Management
Singapore Airlines Ltd.,
Chennai.

APPEARANCE:

For the Workman : M/s. V. Prakash & P. Ramkumar & A. Lakshmi. Advocates.

For the Management : M/s. King & Partridge, Advocate.

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Dispute Act, 1947(14 of 1947), have referred the concerned dispute for adjudication vide Order No. L-11012/54/2000/IR(C-I) dated 7-3-2000.

This reference has been made earlier to the Tamil Nadu State Industrial Tribunal, Chennai where it was taken on file as I.D. No. 69/2000. When the matter was pending enquiry in that Tribunal, as per the orders of the Central Government, Ministry of Labour this case has also been transferred from the file of Tamil Nadu State Industrial Tribunal to this Tribunal for adjudication. On receipt of records from that Tamil Nadu State Industrial Tribunal, this case has been taken on file as I.D. No. 52/2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 24-1-2001 with their respective parties and to prosecute this case further. Accordingly, the learned counsel on either side along with their respective parties have appeared and prosecuted this case. The Claim Statement of the I Party/Workman was filed, when this matter was pending before the Tamil Nadu State Industrial Tribunal itself. After the transfer of this case to this Tribunal, the II Party/Management has filed the Counter Statement and the Xerox copies of the documents on either side also have been filed.

Upon perusing the Claim Statement, Counter Statement, the other material papers on record, after hearing the arguments advances by the learned counsel for the II Party/Management and this matter having stood over till this date for consideration, this Tribunal has passed the following :—

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt. for adjudication by the Tribunal is as follows :—

"Whether the action of the management of Singapore Airlines Ltd., Chennai, in terminating the services of the workman Sri D. M. Shankar with effect from 1-6-1995 is justified? If not, to what relief is the workman entitled ?"

2. The averments in the Claim Statement filed by the I Party/Workman Sri D. M. Shankar (hereinafter refers to as Petitioner) are briefly as follows :—

The Petitioner joined the services of the Singapore Airlines Ltd., II Party/Management hereinafter refers to as Respondent) in the Flight handling Unit as a cargo assistant and flight assistant. He has been working in the Madras Airport for doing the work relating to both passenger and cargo transport. The Petitioner was employed by the II Party/Management for the purpose of typing manifest, arranging and filing of documents and was doing other works allotted by the officials and when the baggage was put on the conveyor belt ensuring proper movement of these articles on the conveyor belt and thereafter removing the same from the Conveyor belt and doing the baggage make up i.e. ensuring proper loading of these baggage into the containers. He has also done the ground duties i.e. ramp work, high loading and bulk loading and when flight lands he does the break up of the baggage and ensuring that they are loaded into the containers for the same to be picked up by disembarking passengers. He has also done the special handling work in respect of first class and business class passengers. For the aforesaid work, the Petitioner has been employed continuously without any break for more than 480 days within a period of 24 calendar months. He was employed continuously from 15-8-1991 till the date of his termination on 1-6-1995. He was paid wages on daily basis @ Rs. 32 per day. On 1-6-95 the II Party/Management introduced a contractor for cargo handling and flight handling and the II Party/Management started payment of wages to the Petitioner through the contractor instead of directly as was done before. After introduction of the contractor, the Petitioner was paid consolidated wages of Rs. 1200 per month. The Petitioner objected to the introduction of contractor and unilateral action of the

II Party/Management in changing the status of Petitioner from direct labour to indirect labour to defeat the claim of the Petitioner/Workman for permanency for which he is entitled to. In view of the fact that the Petitioner had completed more than the minimum requirement of 480 days within a period of 24 months, the II Party/Management knowing that the Petitioner is entitled to permanency has brought in the middlemen system to deprive the Petitioner/Workman of the benefit of Labour welfare legislations. He was employed by the II Party/Management through the contractor till 11-9-95 and thereafter, he has been denied employment without any reasons. Thereafter, he approached the Respondent/Management several times to reinstate him but the management refused to do so. The Petitioner was terminated from service without any notice and solely with a view to deny him the permanency and other labour welfare benefits to which he is entitled to under the various labour welfare legislations. The termination of the petitioner w.e.f. 1-6-1995 is unsustainable in law. The impugned termination of the Petitioner from service is arbitrary, illegal and capricious. It amounts to retrenchment within the meaning of section 2(oo) of the Industrial Disputes Act, 1947. Further no notice or wages in lieu thereof. Nor any retrenchment compersation was paid to the Petitioner before the termination of his service. It is a violation of Section 25N and 25F of the Industrial Disputes Act, 1947. The respondent/Management is not justified in refusing to confer permanency on the Petitioner, even though the work done by him was permanent and perennial in nature. The Petitioner has a blemishless record of service. His last drawn wages is Rs. 1200/- PM. The permanent employees of the Respondent/Management in the last grade are being paid Rs.14,000/- PM. It is, therefore prayed that this Hon'ble Court may be pleased to pass an award directing the Respondent/Management to reinstate the Petitioner and regularise and absorb him in the services of the Respondent/Management and pay him all past benefits as was paid to the permanent workman with all other consequent benefits including seniority, back wages etc.

3. The averments in the Counter Statement filed by the II Party/Management, Singapore Airlines Ltd. (hereinafter refers to as Respondent) are briefly as follows :—

A Ground Handling Agreement was entered into between M/s. Singapore Airlines and M/s. Air India in the year 1988, which was renewed from time to time. The Annexure B clause 4.2 of the agreement states that M/s. Air India, the handling company shall provide service personnel for handling baggage in the Respondent's aircrafts. Under above agreement, the Respondent is only referred to as the 'Carrier' and Air India as 'Handling Company'. Occasionally, when there are over crowding of passengers or arrival of baggage and if a personnel provided by Air India for handling baggage failed to report in time or absent, the Respondent will engage Casual Labourers purely on temporary basis for clearance of baggage, which will amount to an implied contractual engagement. Neither the Petitioner/Workman nor similarly placed persons claiming employment with the Respondent has been engaged on regular basis. The Respondent do not maintain any records relating to temporary/casual engagements, since such engagements arise occasionally. Such temporary engagement of Casual Labourers by the Respondent occasionally will not vest any right on the Petitioner/ Workman to claim benefits under Industrial Disputes Act, 1947 alleging contravention of Section 25F and 25N of the said Act. Temporary, contractual engagements of Casual Labourers if at all will only fall within the ambit of Section 2(oo) (bb) of the Industrial Disputes Act, 1947, which is an exception to retrenchment. Hence, the non-employment of the Petitioner/Workman did not amount to retrenchment and he cannot claim any relief from the Respondent/Management under Industrial Disputes Act, much less retrenchment compensation or re-employment. Inasmuch as, personnel for handling baggage for the aircrafts are provided by Air India, this Respondent/Management is not liable to give employment to the Petitioner. Neither the Petitioner nor similarly placed persons before the authority were engaged in any vacancy or post. There is no vacancy or post available with the Respondent to offer employment to the Petitioner/Workman. The claim of the Petitioner/Workman is stale barred by laches and as such, the Petitioner is not entitled to seek benefits under Industrial Disputes Act from the Respondent. It is false to contend that the Petitioner joined the services of the Respondent/Management on 15-8-91 in the flight handling unit as a cargo assistant and flight assistant and the same is denied. The Petitioner is engaged occasionally to handle over crowding of passengers or arrival of baggage. Therefore, it is incorrect to state that he was employed for the purpose of typing manifest, arranging and filing of documents and doing other works allotted by the II Party/Management. It is denied that the Petitioner had completed 480 days of continuous service in a period of 24 calendar months from 15-8-91. It is denied that a contractor was engaged by the II Party/Management from 1-6-95 for cargo handling and flight handling and the Petitioner is put to strict proof of the same. Even assuming so, the Petitioner was engaged on a purely temporary and casual basis to meet the exigencies as mentioned earlier they will amount to an implied contract at the best. Hence, such engagement falls within the definition of Section 2 (oo) (bb) of Industrial Disputes Act, 1947 and the (question of issuance of notice and illegal termination does not arise much less retrenchment. The Petitioner has come forward with his petition alleging non-employment of the Respondent/Management with an ulterior motive and mala fied intention only to harass the Respondent for seeking monetary benefits. The alleged non-compliance of Section 25F and Section 25N of the Industrial Disputes Act, 1947

are all untenable and cannot be sustained. There is neither privity of contract nor nexus of employee and employer relationship between the Petitioner and the management. The averments by the Petitioner in his claim petition are neither sustainable on law nor on facts. It is denied that the Petitioner's last drawn wages was Rs. 1200 per month. It is false and incorrect to state that the Petitioner had rendered 480 days of continuous service in a period of 24 calendar months. The Petitioner was never engaged on a regular basis. The claims are all ill-founded misconceived, untenable and consequently, the Petitioner is not entitled to any relief much less reinstatement in service, back wages, continuity of service attendant benefits. Hence, it is prayed that the claim of the Petitioner may be dismissed.

4. When the matter was taken up for enquiry on 17-09-2002, the counsel for the II Party/Management alone was present, neither the I Party nor his counsel on record present. No oral or documentary evidence was let in on either side. After it was reported by the learned counsel for the II Party/Management that they have no oral evidence the evidence was closed and posted for arguments for the counsel of either side. After the case has been adjourned twice for advancing the arguments of learned counsel on either side and was taken finally on 10-10-2002, the counsel who appeared for the II Party/Management had advanced his arguments and as the counsel for the I party was not present to advance his arguments, it was held as no arguments for I Party and it was reserved for orders.

5. The point for my consideration is—

"Whether the action of the management of Singapore Airlines Ltd., Chennai, in terminating the services of the workman Sri D. M. Shankar with effect from 1-6-1995 is justified ? If not, to what relief is the workman entitled ?"

Point :

It is the case of the Petitioner that he joined the services of the Singapore Airlines Ltd. as a cargo assistant and flight assistant on 15-08-1991 and he was illegally denied employment w.e.f. 01-06-1995 and that he has been employed continuously for more than 480 days within a period of 24 calendar months and that he was not paid retrenchment compensation and he was not given any notice in writing or wages in lieu of notice and hence such termination is bad for non-compliance of Section 25F of Industrial Disputes Act. The Respondent/Management would contend that a ground handling agreement was entered into between the Respondent and the Air India in the year 1988 which was renewed from time to time and that M/s. Air India, the Handling Company shall provide service personnel for handling baggage in the Respondent's Aircraft and that occasionally when there are over crowding of passengers or arrival of baggage and if personnel provided by the Air India for handling baggage failed to report in time or absent, the Respondent will engage Casual Labourers purely on temporary basis for clearance of baggage which would amount to an implied contractual engagement and hence, the workman like Petitioner have never been engaged on a regular basis and such temporary engagement of Casual Labourers by the Respondent occasionally will not vest any right on the Petitioner/Workman to claim benefits under Industrial Disputes Act alleging contravention of Section 25F of Industrial Disputes Act. It is further alleged that the non-employment of the Petitioner/Workman did not amount to retrenchment and he cannot claim any relief from the management under the Industrial Disputes Act much less retrenchment compensation or re-employment. It is also alleged by the Respondent/Management that the temporary contractual agreement for Casual Labourers if at all will only fall within the ambit of Section 2(oo)(bb) of the Industrial Disputes Act, 1947 which is an exception to retrenchment. Hence the Petitioner cannot claim any relief from the Respondent/Management much less retrenchment compensation or re-employment. In support of the contention of the Respondent/Management in their Counter Statement, a xerox copy of the ground handling agreement entered into between the Singapore Airlines and Air India has been filed into Court, after furnishing a copy of the same to other side. It is not disputed on the side of the Petitioner. The Petitioner has not chosen to let in oral or documentary evidence in support of his contention in the Claim Statement. But, he has filed Xerox copies of a daily permit dated 22-8-92, three days temporary pass dated 25-8-93 and six temporary passes issued by the Airport Security Authority each for the period of three months. In those documents, it is mentioned as temporary pass and the Petitioner Sri D. M. Shankar was allowed in area of Terminal II Airport Cargo Complex for the work of Cargo Assistant under that temporary passes. Except these documents, no other document has been filed by the Petitioner in support of his contention in the Claim Statement about his service as cargo assistant and flight assistant under the Respondent/Management for the alleged period from 15-08-91 to 01-06-1995. These temporary passes also do not disclose that he was an employee under the Respondent/Management Singapore Airlines. In the Claim Statement also the Petitioner has not given any particulars about the days he worked under Respondent/ Management as a cargo assistant and on other capacities as a workman. He has simply stated in his Claim Statement that he has been employed continuously without any break for more than 480 days within a period of 24 calendar months. Except filing the xerox copies of temporary passes for a short period issued to him by the Bureau of Civil Aviation Security for the period mentioned therein, the petitioner has not proved his plea about his alleged period of service under the respondent. For his averment in the Claim Statement that he attended the work mentioned in the Claim Statement and that he worked continuously

without any break for more than 480 days within a period of 24 calendar months, he has not given any substantial evidence. It is the specific contention of the Respondent in the Counter Statement that the persons like the Petitioner were engaged by the Respondent, Singapore Airlines Ltd. as Casual Labourers purely on temporary basis for clearance of baggage as and when occasion arises and that the Respondent/Management used to engage Casual Labourers on daily wage basis at the time of heavy arrivals and departures of flights and such employment they used to make on temporary basis and they never used to engage them continuously for a period of 240 days in 12 calendar months. So from these contentions of either parties, it can be said that the allegation of the Petitioner that he had worked for more than 480 days continuously within a period of 24 calendar months is not correct, when the Petitioner has raised this claim to avail the relief prayed for in the claim petition from the Respondent/Management, he has to prove his plea in the Claim Statement with acceptable legal evidence that he had been employed continuously without any break for more than 480 days within a period of 24 calendar months. Thus, the Petitioner/Workman has not discharged his burden, though the onus is on him to prove that he had worked 480 days continuously in a period of 24 calendar months. The Respondent in their Counter Statement has stated that the Respondent/ Management emphatically denies that the Petitioner has completed 240 days of continuous service in a period of 12 calendar months. The learned counsel for the Respondent had also argued that the Petitioner has failed to prove with acceptable legal evidence that he had worked for 240 days in a period of 12 calendar months/480 days continuously for a period of 24 calendar months. Hence, he cannot ask for the relief of reinstatement into service as that of a permanent workman. He had also relied upon a decision of Supreme Court reported as 2002 Factories Journal Report Vol. 100 pg.397 between Range Forest Officer and S. T. Hadimani. In that case the Supreme Court has held that "since the claim of the workman that he had worked for 240 days was denied by the Management, it is for the workman to lead evidence to show that he had in fact, worked for 240 days and that in the absence of proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for that period, it cannot be concluded that the workman had in fact, worked for 240 days and the onus is on the workman to prove the claim with sufficient records and mere an affidavit is not sufficient." The decision of the Supreme Court in this case is quite applicable to the present case also. It is further argued by the learned counsel for the Respondent that the averment in the Counter Statement of the Respondent to that effect that the Respondent/ Management had entered into ground handling agreement with Air India and in pursuance of the same, Air India has taken care of the ground handling work, which the Petitioner was said to have attended as cargo assistant, and the same has not been denied by the Petitioner. Though the period of work alleged by the Petitioner in his Claim Statement has been emphatically denied in the Counter Statement of the Respondent/Management, the Petitioner has not chosen to prove his alleged period of service with acceptable legal oral or documentary evidence. It is further argued by the learned counsel for the Respondent that the people like the Petitioner/Workman have been engaged as a casual employees at the time of exigencies to meet the requirement or personnel for handling baggage for aircrafts during the period of over crowding of passengers or arrival of baggage and the personnel provided by Air India for that work failed to report in time or remains absent. This has not been disputed by the Petitioner as incorrect or false. The learned counsel would further contend that such casual employment would amount to only implied contractual agreement, which squarely comes under Section 2 (oo) (bb) of Industrial Disputes Act, 1947 which is an exception to retrenchment and hence there was no retrenchment in the case of the Petitioner's non-employment and he cannot claim any relief from the Respondent/Management under the Industrial Disputes Act, 1947 and that he cannot claim retrenchment compensation or re-employment. He would further argue that mere pleadings of the Petitioner in his Claim Statement that he was employed under the Respondent/Management for a particular period is not suffice and as per the decision of Madras High Court in a case reported as 2001 4 LLN 903 the Petitioner has to prove the pleadings by letting sufficient evidence. In the above cited case, the Hon'ble High Court of Madras has held that "the allegation which was not pleaded and even if evidence is adduced in that regard cannot be examined because the other side had no notice of it and if such evidence is entertained it would tantamount to granting unfair advantage to the party who had not pleaded his case properly". So from this, it is seen that argument advanced by the learned counsel for the Respondent/Management can be accepted as correct as there is no evidence to show in this case, on the side of the Petitioner, that he has been employed under the Respondent/Management Singapore Airlines and was in continuous employment for more than 480 days in a period of 24 calendar months. So, from all these things, it is seen that the Petitioner cannot ask for reinstatement in service. From the available evidence, it is seen that the Petitioner was engaged only as a casuals workman by the Respondent/Management as and when occasion arises. So by the very nature of the employment of the Petitioner, he has no assurance that he would be employed by the Respondent/Management for any specified duration. The persons like Petitioner temporary employment could not be for any period for which they can look forward to assured work from the employer. It is held by the High Court of Madras in a case reported as 2001 3 LLN 807 between L &T MCNEIL LTD. MADRAS and PRESIDING OFFICER, MADRAS LABOUR COURT AND ANOTHER that "casual workmen have only to report each day and hope that employment would be provided to

them on that day. Their not going to the place of employer will not result in any penalty as they are not assured of work daily. This kind of employment, therefore, cannot be treated on par with the temporary and permanent employment. The employers are not bound to provide work to casual workmen unless they choose to and there is work for the day. Directing reinstatement of casual workman who had worked as such, for a relatively short period of time, would only mean that their names would once again be included in the list of casual workmen putting them in the same position they were earlier, where they would only report for the employment with the hope being providing with the work and no more." This observation of the High Court of Madras in the above cited case is applicable to the facts of this case also.

6. The learned counsel for the Respondent/ Management had argued that the Petitioner has not at all pleaded in the Claim Statement that prior to the termination he had worked for 240 days continuously but it is his plea that he had worked 480 days in 24 calendar months and the same also has not been proved and that the Petitioner is not entitled for any permanent employment. Since he was engaged only as a casual worker as and when required due to the exigencies, the question of termination does not arise and hence they are not entitled to the relief of reinstatement also as a permanent employee of Respondent/Management.

7. On the basis of the available materials in this case, the argument advanced by the learned counsel for the Respondent/Management can be accepted as correct. Under such circumstances, it can be concluded, that there is no question of termination of the service of the Petitioner by the Respondent/Management and the non-employment of Petitioner does not amount to any retrenchment. Hence, it can be concluded that the non-employment of the Petitioner/Workman Sir D.M. Shankar by the Respondent/ Management, Singapore Airlines Ltd. Chennai is justified and hence the concerned workman is not entitled to any relief. Thus, the point is answered accordingly.

8. In the result, an Award is passed holding that the I Party/Workman Sri D. M. Shankar is not entitled for any relief. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 20th November, 2002.)

Witness Examined :—

On either side : None

Exibits marked :—

On either side : Nil

K. KARTHIKEYAN, Presiding Officer

नई दिल्ली 11 दिसम्बर, 2002

का.आ. 32.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंगापुर एयर लाईस लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 687/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9/12/2002 को प्राप्त हुआ था।

[सं. एल-11012/2/99-आई. आर.(सी.1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 11th December, 2002

S.O. 32—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 687/2001) of the Central Government Industrial Tribunal, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Singapur Airlines Ltd., and their workman, which was received by the Central Government on 9-12-2002.

[No. L.-11012/2/99-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 20th November, 2002

PRESENT : K. KARTHIKEYAN, Presiding Officer

INDUSTRIAL DISPUTE NO. 687/2001

(Tamil Nadu Principal Labour Court CGID. No. 325/99)

(In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Workman Sri S. George and the Managing Director, Singapore Airlines Ltd., Chennai.)

BETWEEN

Sri S. George	:	I Party/Workman

AND

The Managing Director, Singapore Airlines Ltd., Chennai.	:	II Party/ Management

APPEARANCE:

For the Workman	:	M/s. V. Prakash & P. Ramkumar & A. Lakshmi, Advocates.
For the Management	:	M/s. King & Partridge, Advocate.

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned dispute for adjudication vide Order No.L-11012/2/99/IR (CM-I) dated 18.05.1999.

This reference has been made earlier to the Tamil Nadu Principal Labour Court, Chennai, where it was taken on file as CGID. No. 325/99. When the matter was pending enquiry in that Labour Court, as per the orders of the Central Government, Ministry of Labour this case has also been transferred from the file of Tamil Nadu Principal Labour Court to this Tribunal for adjudication. On receipt of records from that Principal Labour Court, this case has been taken on file as I.D. No. 687/2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 16.10.2001 with their respective parties and to prosecute this case further. Accordingly, the learned counsel on either side along with their respective parties have appeared and prosecuted this case. The Claim Statement of the I Party/Workman and the Counter Statement of the II Party/Management were filed, when this matter was pending before the Tamil Nadu Principal Labour Court itself.

Upon perusing the Claim Statement, Counter Statement, the other material papers on record, after hearing the arguments advanced by the learned counsel for the II party/Management and this matter having stood over till this date for consideration, this Tribunal has passed the following :—

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt. for adjudication by this Tribunal is as follows:—

> "Whether the action of the management of M/s. Singapore Airlines Ltd., Chennai, in terminating the service of Sri S. George from 05-05-98 is justified ? If not, to what relief the workman is entitled?"

2. The averments in the Claim Statement filed by the I Party/Workman Sri S. George (hereinafter refers to as Petitioner) are briefly as follows:—

The Petitioner has been working in the Madras Airport employed by M/s. Singapore Airlines Ltd. II Party/Management (hereinafter refers to as Respondent) for doing the work relating to both passenger and cargo transport. He does the work of wheel chair assistance for handicapped passengers, assistance in the ticket checking counter for taking the baggage, putting the baggage tag on and putting them on conveyor belt and ensuring proper movement of these articles on the conveyor belt and thereafter removing the same from the Conveyor belt and doing the baggage make up i.e. ensuring proper loading of these baggage into the containers. He has also done the ground duties i.e. ramp work, high loading and bulk loading and when the flight lands, he does the break up of the baggage and ensuring that they are loaded into the containers for the same to be picked up by disembarking passengers. He has also done the special handling work in respect of first class and business class passengers. With regard to cargo flights he did loading and off loading and palletising. For the aforesaid work, the Petitioner has been employed continuously without any break for more than 480 days within a period of 24 calendar months. He was employed continuously from the year 1992 till the date of his termination. On 2-5-98 a notice by the petitioner and other similarly placed workmen was issued through a counsel to the II Party/Management M/s. Singapore Airlines Ltd. seeking that the Petitioners may be made permanent and the management should not attempt to bring in a contractor in a relationship that was hitherto direct. Then, when the Petitioner along with similarly placed workmen reported for duty on 4-5-98, Mr. Lim Thong Cheng the Station Manager and Mr. Srinivasan the Assistant Station Manager of the II Party/Management at Anna International Airport, Chennai, called the workmen into the Station Manager's cabin locked the door and scolded the workmen for having gone to the lawyer and thereafter took away the temporary passes issued to them by the Bureau of Civil Aviation Authority, Chennai. Thereafter, they were asked to go out. This was done after they had completed their work for the departure of the Singapore Airlines flight. They were kept inside the Manager's cabin from 00.00 hours to 02.00 hours on the night of 4th/5th May, 1998. The workers were during that time asked either to sign on the contract agreeing to work under the contractor or failing which it was said that their services stood terminated. Significantly, Mr. Rosaiah, S/o. Mr. Devaiyah employed by the II Party/Management from 1993 who was not one of the workmen involved in the notice was given back his temporary pass issued by the Bureau of Civil Aviation Security, Chennai. Mr. Somu and Mr. Anantharaman did not attend the work on 4-5-98 and hence their passes were not taken. However, when the Petitioner reported for duty on the next day i.e. on 05-05-98 he was denied employment by the II Party/Management. Thus, the Petitioner and similarly placed workmen were terminated from service without any notice and solely with a view to victimise the Petitioner for claiming permanency and other labour welfare benefits to which he is entitled to under the various labour welfare legislations. Immediately thereafter on 5th May, 1998, a lawyer's notice was issued to the Singapore Airlines and various other officials including Mr. Lim Thong Cheng and Mr. Srinivasan objecting to the Petitioner's termination and the termination of service of similarly placed workmen like the Petitioner in the circumstances done and seeking reinstatement with all consequential benefits including permanency and by

mentioning that they have committed unfair labour practice. A reply was issued on behalf of the management through their counsel on 19-5-98. In that reply, the termination of the Petitioner and others from service had not been denied. Then the Petitioner raised an industrial dispute under Section 2A of the Act before the Assistant Labour Commissioner (Central) Chennai. The impugned termination of the Petitioner from service w.e.f. 5-5-98 is arbitrary, illegal, capricious and whimsical. The Petitioner has been victimised for trying to assert his rights conferred on him under various labour welfare legislations. The action of the Respondent in terminating the Petitioner amounts to retrenchment within the meaning of Section 2 (oo) of Industrial Disputes Act, 1947. The Respondent has not complied with the conditions precedent mandated under section 25F of the Act. The action of the Respondent in seeking to introduce contract labour system in a relationship which was hitherto direct amounts to changing the service conditions for which statutory notice under Section 9A had not been given. It is an offence as per the provisions of Industrial Disputes Act, 1947. The Respondent/Management is not justified in refusing to confer permanency on the Petitioner and similarly placed workmen even though they had been working continuously for a very long period of time. The action of the Respondent/ Management is in violation of Article 21 of Constitution of India. The last drawn wages of the Petitioner was Rs. 1050/- p.m. The permanent employees of the Respondent/ Management in the last grade are being paid Rs. 14, 000/- p.m. Hence is, therefore prayed that this Hon'ble Court may be pleased to pass an award directing the Respondent/ Management to reinstate the Petitioner and regularise and absorb him in the services of the Respondent/Management and pay him all past benefits as was paid to the permanent workman with all other consequent benefits including seniority, back wages etc.

3. The averments in the Counter Statement filed by the II Party/Management, Singapore Airlines Ltd. (hereinafter refers to as Respondent) are briefly as follows :—

A Ground Handling Agreement was entered into between M/s. Singapore Airlines and M/s. Air India in the year 1988, which was renewed from time to time. The Annexure B clause 4.2 of the agreement states that M/s. Air India, the handling company shall provide service personnel for handling baggage in the Respondent's aircrafts. Under above agreement, the Respondent is only referred to as the 'Carrier' and Air India as 'Handling Company'. Occasionally, when there are over crowding of passengers or arrival of baggage and if a personnel provided by Air India for handling baggage failed to report in time or absent, the Respondent will engage Casual Labourers purely on temporary basis for clearance of baggage, which will amount to an implied contractual engagement. Neither the Petitioner/Workman nor similarly placed persons claiming employment with the Respondent has been engaged on regular basis. The Respondent do not maintain any records relating to temporary/casual engagements, since such engagements arise occasionally. Such temporary engagement of Casual Labourers by the Respondent occasionally will not vest any right on the Petitioner/ Workman to claim benefits under Industrial Disputes Act, 1947 alleging contravention of Section 25F and 25N of the said Act. Temporary, contractual engagements of Casual Labourers if at all will only fall within the ambit of Section 2 (oo) (bb) of the Industrial Disputes Act, 1947, which is an exception to retrenchment. Hence, the non- employment of the Petitioner/Workman did not amount to retrenchment and he cannot claim any relief from the Respondent/ Management under Industrial Disputes Act, much less retrenchment compensation or re-employment. Inasmuch as. personnel for handling baggage for the aircrafts are provided by Air India, this Respondent/Management is not liable to give employment to the Petitioner. Neither the Petitioner nor similarly placed persons before the authority were engaged in any vacancy or post. There is no vacancy or post available with the Respondent to offer employment to the Petitioner/Workman. The claim of the Petitioner/ Workman is stale barred by laches and as such, the Petitioner is not entitled to seek benefits under Industrial Disputes Act from the Respondent. It is false to contend that the Petitioner joined the services of the Respondent/ Management for doing the work relating to both passenger and cargo transport. The Petitioner was engaged occasionally to handle over crowding of passengers or arrival of baggage. Therefore, it is incorrect to state that he was given duties as a loader to load the baggage in the aircraft and he was asked to work for baggage identification. M/s. Air India who is the handling company provides personnel for handling baggage of the Respondent aircrafts. There is no nexus of employer and employee relationship between the Petitioner and Respondent/Management. The Petitioner cannot maintain the industrial dispute in the absence of any positive proof of employer-employee relationship between him and the Respondent/Management and hence, it is liable to be dismissed in limini. It is denied that the Petitioner had completed 480 days of continuous service in a period of 24 calendar months from the year 1992. It was purely on a temporary basis, casual to meet the exigencies as mentioned earlier which will amount to an implied contract at the best. Hence, such engagement falls within the definition of Section 2 (oo) (bb) of Industrial Disputes Act, 1947 and the question of issuance of notice and illegal termination does not arise much less retrenchment. The Petitioner has come forward with his petition alleging non-employment of the Respondent/ Management with an ulterior motive and malafide intention only to harass the Respondent for seeking monetary benefits. The alleged non-compliance of Section 25F and Section 25N of the Industrial Disputes Act, 1947 are all untenable and cannot be sustained. The Petitioner's

counsel's notice dated 2-5-98 was suitably answered by the Respondent's counsel's reply dated 19-5-98. The allegations in the Claim Statement about the alleged occurrence on 4-5-98 in the Station Manager's cabin are denied as false. The notice dated 5-5-98 was suitably answered by the reply notice dated 5-6-98 issued through the counsel of the Respondent. The alleged termination of the services of the Petitioner and sinilarly placed persons does not amount to unfair labour practice. There is no illegal or malafide termination of service of the Petitioner, since he was employed only on a casual basis. The question of violation of Section 9A of the Industrial Disputes Act, 1947 does not arise in the facts and circumstances of the case. Since the Petitioner was engaged on casual basis as and when exigency arose, the question of paying monthly wages does not arise at all. The claims are all ill-founded, misconceived, untenable and consequently, the Petitioner is not entitled to any relief much less reinstatement in service, back wages, continuity of service attendant benefits. Hence, it is prayed that the claim of the Petitioner may be dismissed.

4. When the matter was taken up for enquiry on 17-09-2002, the counsel for the II Party/Management alone was present, neither the I Party nor his counsel on record present. No oral or documentary evidence was let in on either side. After it was reported by the learned counsel for the II Party/Management that they have no oral evidence, the evidence was closed and posted for arguments for the counsel on other side. After the case has been adjurned twice far advancing the arguments of learned counsel on either side and was taken finally on 10-10-2002, the counsel who appeared for the II Party/Management had advanced his arguments and as the counsel for the I Party was not present to advance his arguments, it was held as no arguments for I Party and it was reserved for orders.

5. The point for my consideration is —

"Whether the action of the management of M/s. Singapore Airlines Ltd., Chennai, in terminating the service of Sri S.George from 05-05-98 is justified? If not, to what relief the workman is entitled?"

Point :—

It is the case of the Petitioner that he joined the services of the Singapore Airlines Ltd. for doing the work relating to both passenger and cargo transport and he was illegally denied employment w.e.f. 05-05-98 and that he has been employed continuously for more than 480 days within a period of 24 calendar months and that he was not paid retrenchment compensation and he was not given any notice in writing or wages in lieu of notice and hence such termination is bad for non-compliance of Section 25F of Industrial Disputes Act. The Respondent/Management would contend that a ground handling agreement was entered into between the Respondent and the Air India in the year 1988 which was renewed from time to time and that M/s. Air India, the Handling Company shall provide service personnel for handling baggage in the Respondent's Aircraft and that occasionally when there are over crowding of passengers or arrival of baggage and if personnel provided by the Air India for handling baggage failed to report in time or absent, the Respondent will engage Casual Labourers purely on temporary basis for clearance of baggage which would amount to an implied contractual engagement and hence, the workman like Petitioner have never been engaged on a regular basis and such temporary engagement of Casual Labourers by the Respondent occasionally will not vest any right on the Petitioner/ Workman to claim benefits under Industrial Disputes Act alleging contravention of Section 25F of Industrial Disputes Act. It is further alleged that the non-employment of the Petitioner/Workman did not amount to retrenchment and he cannot claim any relief from the management under the Industrial Disputes Act much less retrenchment compensation or re-employment. It is also alleged by the Respondent/Management that the temporary contractual agreement for Casual Labourers if at all will only fall within the ambit of Section 2 (oo) (bb) of the Industrial Disputes Act, 1947 which is an exception to retrenchment. Hence the Petitioner cannot claim any relief from the Respondent/ Management much less retrenchment compensation or re-employment. In support of the contention of the Respondent/Management in their Counter Statement, a xerox copy of the ground handling agreement entered into between the Singapore Airlines and Air India has been filed into Court, after furnishing a copy of the same to other side. It is not disputed on the side of the Petitioner. The Petitioner has not chosen to let in oral or documentary. evidence in support of his contention in the Claim Statement Except raising a plea in the Claim Statement that a notice was sent through his counsel to the Respondent/ Management and a reply has been received for the same from the counsel for the Respondent/Management, no evidence either oral or documentary has been let in, in support of that version. Apart from that there is absolutely no oral or documentary evidence on the side of the Petitioner/Workman to prove his alleged continuous service directly under the Respondent/Management. As per the contention of the Respondent/Management, no evidence worth considering has been let in by the Petitioner to show that there was employer-employee relationship existed between the Respondent/Management and the Petitioner/ Workman. In the Claim Statement also, the Petitioner has not given any particulars about the days he worked under Respondent/Management in respect of the work relatmg to both passenger and cargo transport and on other capacities. as a workman. He has simply stated in his Claim Statement that he has been employed continuously without any break for more than 480 days within a period of 24 calendar moriths. For his averment in the Claim Statement that he attended the work mentioned in the Claim Statement and that he worked continuously without any

break for more than 480 days within a period of 24 calendar months, he has not produced any substantial evidence. It is the specific contention of the Respondent in the Counter Statement that the persons like the Petitioner were engaged by the Respondent, Singapore Airlines Ltd. as Casual Labourers purely on temporary basis for clearance of baggage as and when occasion arises and that the Respondent/Management used to engage Casual Labourers on daily wage basis at the time of heavy arrivals and departures of flights and such employment they used to make on temporary basis and they never used to engage them continuously for a period of 240 days in 12 calendar months. So from these contentions of either parties, it can be said that the allegation of the Petitioner that he had worked for more than 480 days continuously within a period of 24 calendar months is not correct. When the Petitioner has raised this claim to avail the relief prayed for in the claim petition from the Respondent/Management, he has to prove his plea in the Claim Statement with acceptable legal evidence that he had been employed continuously without any break for more than 480 days within a period of 24 calendar months. Thus, the Petitioner/Workman has not discharged his burden, though the onus is on him to prove that he had worked 480 days continuously in a period of 24 calendar months. The Respondent in their Counter Statement has stated that the Respondent/Management emphatically denies that the Petitioner has completed 240 days of continuous service in a period of 12 calendar months. The learned counsel for the Respondent had also argued that the Petitioner has failed to prove with acceptable legal evidence that he had worked for 240 days in a period of 12 calendar months/480 days continuously for a period of 24 calendar months. Hence, he cannot ask for the relief of reinstatement into service as that of a permanent workman. He had also relied upon a decision of Supreme Court reported as 2002 FACTORIES JOURNAL REPORT Vol. 100 pg.397 between RANGE FOREST OFFICER and S.T. HADIMANI. In that case the Supreme Court has held that "since the claim of the workman that he had worked for 240 days was denied by the Management, it is for the workman to lead evidence to show that he had in fact, worked for 240 days and that in the absence of proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for that period, it cannot be concluded that the workman had in fact, worked for 240 days and the onus is on the workman to prove the claim with sufficient records and mere an affidavit is not sufficient." The decision of the Supreme Court in this case is quite applicable to the present case also. It is further argued by the learned counsel for the Respondent that the averment in the Counter Statement of the Respondent to that effect that the Respondent/Management had entered into ground handling agreement with Air India and in pursuance of the same, Air India has taken care of the ground handling work, which the Petitioner was said to have attended the work relating to both passenger and cargo transport, and the same has not been denied by the Petitioner. Though the period of work alleged by the Petitioner in his Claim Statement has been emphatically denied in the Counter Statement of the Respondent/ Management, the Petitioner has not chosen to prove his alleged period of service with acceptable legal oral or documentary evidence. It is further argued by the learned counsel for the Respondent that the people like the Petitioner/Workman have been engaged as casual employees at the time of exigencies to meet the requirement or personnel for handling baggage for aircrafts during the period of over' crowding of passengers or arrival of baggage and the personnel provided by Air India for that work failed to report in time or remains absent. This has not been disputed by the Petitioner as incorrect or false. The learned counsel would further contend that such casual employment would amount to only implied contractual agreement, which squarely comes under Section 2 (oo) (bb) of Industrial Disputes Act, 1947 which is an exception to retrenchment and hence there was no retrenchment in the case of the Petitioner's non-employment and he cannot claim any relief from the Respondent/Management under the Industrial Disputes Act, 1947 and that he cannot claim retrenchment compensation or re-employment. He would further argue that mere pleadings of the Petitioner in his Claim Statement that he was employed under the Respondent/Management for a particular period is not suffice and as per the decision of Madras High Court in a case reported as 2001 4 LLN 903 the Petitioner has to prove the pleadings by letting sufficient evidence. In the above cited case, the Hon'ble High Court of Madras has held that "the allegation which was not pleaded and even if evidence is adduced in that regard cannot be examined because the other side had no notice of it and if such evidence is entertained it would tantamount to granting unfair advantage to the party who had not pleaded his case properly". So from this, it is seen that argument advanced by the learned counsel for the Respondent/Management can be accepted as correct as there is no evidence to show in this case, on the side of the Petitioner, that he has been employed under the Respondent/Management Singapore Airlines and was in continuous employment for more than 480 days in a period of 24 calendar months. So, from all these things, it is seen that the Petitioner cannot ask for reinstatement in service. From the available evidence, it is seen that the Petitioner was engaged only as a casual workman by the Respondent/Management as and when occasion arises. So by the very nature of the employment of the Petitioner, he has no assurance that he would be employed by the Respondent/Management for any specified duration. The persons like Petitioner temporary employment could not be for any period for which they can look forward to assured work from the employer. It is held by the High Court of Madras in a case reported as 2001 3 LLN 807 between L & T McNEIL LTD. MADRAS and PRESIDING OFFICER, MADRAS LABOUR COURT

AND ANOTHER that "casual workmen have only to report each day and hope that employment would be provided to them on that day. Their not going to the place of employer will not result in any penalty as they are not assured of work daily. This kind of employment, therefore, cannot be treated on par with the temporary and permanent employment. The employers are not bound to provide work to casual workmen unless they choose to and there is work for the day. Directing reinstatement of casual workman who had worked as such, for a relatively short period of time, would only mean that their names would once again be included in the list of casual workmen putting them in the same position they were earlier, where they would only report for the employment with the hope being providing with the work and no more." This observation of the High Court of Madras in the above cited case is applicable to the facts of this case also.

6. The learned counsel for the Respondent/ Management had argued that the Petitioner has not at all pleaded in the Claim Statement that prior to the termination he had worked for 240 days continuously but it is his plea that he had worked 480 days in 24 calendar months and the same also has not been proved and that the Petitioner is not entitled for any permanent employment. Since he was engaged only as a casual worker as and when required due to the exigencies, the question of termination does not arise and hence they are not entitled to the relief of reinstatement also as a permanent employee of the Respondent/Management.

7. On the basis of the available materials in this case, the argument advanced by the learned counsel for the Respondent/Management can be accepted as correct. Under such circumstances, it can be concluded that there is no question of termination of the service of the Petitioner by the Respondent/Management and the non-employment of the Petitioner does not amount to any retrenchment. Hence, it can be concluded that the non-employment of the Petitioner/Workman Sri S.George by the Respondent/ Management, Singapore Airlines Ltd., Chennai, is justified and hence the concerned workman is not entitled to any relief. Thus, the point is answered accordingly.

8. In the result, an Award is passed holding that the I Party/Workman Sri S.George is not entitled for any relief. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 20th November, 2002.)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined:-

On either side : None-

Exhibits marked:-

On either side : Nil

नई दिल्ली, 11 दिसम्बर, 2002

का. आ. 33.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंगापुर एअरलाईस लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पंचाट (संदर्भ संख्या 686/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-12-2002 को प्राप्त हुआ था।

[सं. एल-11012/3/99-आई.आर.(सी.-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 11th December, 2002

S.O. 33.—In pursuance of Section 17 of the Industrial Disputed Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 686/ 2001) of the Central Government Industrial Tribunal, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Singapur Airlines Ltd. and their workman, which was received by the Central Government on 9-12-2002

[No. L-11012/3/99-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR COURT, CHENNAI

Wednesday, the 20th November, 2002

PRESENT

SHRI K. KARTHIKEYAN, PRESIDING OFFICER

INDUSTRIAL DISPUTE NO. 686/2001

(Tamil Nadu Principal Labour Court CGID. No. 324/99)

(In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Dispute Act, 1947 (14 of 1947), between the workman Sri N. Gunasekar and the Managing Director, Singapore Airlines Ltd. Chennai.)

BETWEEN

Sri N. Gunasekar : I Party/ Workman

AND

The Managing Director, Singapur Airlines Ltd., Chennai. : II Party/Management

APPEARANCE

For the workman : M/s V. Prakash & P. Ramkumar & A. Lakshmi Advocates

For the Management : M/s King & Partridge, Advocate

The Govt. of India Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (I) and sub-section 2(A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned dispute for adjudication vide Order No. L. 11012/3/99/IR (CM-I) dated 18-5-1999.

This reference has been made earlier to the Tamil Nadu Principal Labour Court, Chennai, where it was taken on file as CGID. No. 324/99. When the matter was pending enquiry in that Labour Court, as per the order of the Central Government, Ministry of Labour this case has also been transferred from the file of Tamil Nadu Principal Labour Court to this Tribunal for adjudication. On receipt of records from that Principal Labour Court, this case has been taken on file as I.D. No. 686/2001 and notice were sent to the counsel on record on either side, informing them about the transfer of this case of this Tribunal, with a direction to appear before this Tribunal on 16-10-2001 with their respective parties and to prosecute this case further. Accordingly, the learned counsel on either side along with their respective parties have appeared and prosecuted this case. The claim Statement the I Party/ Workman and the counter statement of the II Party/ Management were filed, when this matter was pending before the Tamil Nadu Principal Labour Court itself.

Upon perusing the claim statement, counter statement, the other material papers on record, after hearing the arguments advanced by the learned counsel for the II Party/Management and this matter having stood over till this date for consideration, this Tribunal has passed the following: -

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt. for adjudication by this Tribunal is as follows: -

"Whether the action of the management of M/s. Singapore Airlines Ltd., Chennai, in terminating the service of Sri N.Gunasekar from 05.05.98 is justified or not? If not justified, to what relief the workman is entitled?"

2. The averments in the Claim Statement filed by the I Party/Workman Sri N.Gunasekar (hereinafter refers to as Petitioner) are briefly as follows:-

The Petitioner has been working in the Madras Airport employed by M/s. Singapore Airlines Ltd. II Party/ Management (hereinafter refers to as Respondent) for doing the work relating to both passenger and cargo transport. He does the work of wheel chair assistance for handicapped passengers, assistance in the ticket checking counter for taking the baggage, putting the baggage tag on and putting them on conveyor belt and ensuring proper movement of these articles on the conveyor belt and thereafter removing the same from the conveyor belt and doing the baggage make up i.e. ensuring proper loading of these baggage into the containers. He has also done the ground duties i.e. ramp work, high loading and bulk loading and when the flight lands, he does the break up of the baggage and ensuring that they are loaded into the containers for the same to be picked up by disembarking passengers. He has also done the special handling work in respect of first class and business class passengers. With regard to cargo flights he did loading and off loading and palletising. For the aforesaid work, the Petitioner has been employed continuously without any break for more than 480 days within a period of 24 calendar months. He was employed continuously from the year 1992 till the date of his termination. On 2-5-98 a notice by the Petitioner and other similarly placed workmen was issued through a counsel to the II Party/Management M/s. Singapore Airlines Ltd. seeking that the Petitioners may be made permanent and the management should not attempt to bring in a contractor in a relationship that was hitherto direct. Then, when the Petitioner along with similarly placed workmen reported for duty on 4.5.98, Mr. Lim Thom Cheng the Station Manager and Mr. Srinivasan the Assistant Station Manager of the II Party/Management at Anna International Airport, Chennai, called the workmen into the Station Manager's cabin locked the door and scolded the workmen for having gone to the lawyer and thereafter took away the temporary passes issued to them by the Bureau of Civil Aviation Authority, Chennai. Thereafter, they were asked to go out. This was done after they had completed their work for the departure of the Singapore Airlines flight. They were kept inside the Manager's cabin from 00.00 hours to 02.00 hours on the night of 4th/5th May, 1998. The workers were during that time asked either to sign on the contract agreeing to work under the contractor or failing which it was said that their services stood terminated. Significantly, Mr. Rosaiah, S/o. Mr. Devaiyah employed by the II Party/Management from 1993 who was not one of the workmen involved in the notice was given back his temporary pass issued by the Bureau of Civil Aviation Security, Chennai. Mr. Sonu and Mr. Anantharaman did not attend the work on 4.5.98 and hence their passes were not taken. However, when the Petitioner reported for duty on the next day i.e. on 05.05.98 he was denied employment by the II Party/Management. Thus, the Petitioner and similarly placed workmen were terminated from service without any notice and solely with a view to victimise the Petitioner for claiming permanency and other labour welfare benefits to which he is entitled to under the various labour welfare legislations. Immediately thereafter on 5th May, 1998, a lawyer's notice was issued

to the Singapore Airlines and various other officials including Mr. Lim Thong Cheng and Mr. Srinivasan objecting to the Petitioner's termination and the termination of service of similarly placed workmen like the Petitioner in the circumstances done and seeking reinstatement with all consequential benefits including permanency and by mentioning that they have committed unfair labour practice. A reply was issued on behalf of the management through their counsel on 19.5.98. In that reply, the termination of the Petitioner and others from service had not been denied. Then the Petitioner raised an industrial dispute under section 2A of the Act before the Assistant Labour Commissioner (Central) Chennai. The impugned termination of the Petitioner from service w.e.f. 5.5.98 is arbitrary, illegal, capricious and whimsical. The Petitioner has been victimised for trying to assert his rights conferred on him under various labour welfare legislations. The action of the Respondent in terminating the Petitioner amounts to retrenchment within the meaning of Section 2(oo) of Industrial Disputes Act, 1947. The Respondent has not complied with the conditions precedent mandated under section 25F of the Act. The action of the Respondent in seeking to introduce contract labour system in a relationship which was hitherto direct amounts to changing the service conditions for which statutory notice under section 9A had not been given. It is an offence as per the provisions of Industrial Disputes Act, 1947. The Respondent/Management is not justified in refusing to confer permanency on the Petitioner and similarly placed workmen even though they had been working continuously for a very long period of time. The action of the Respondent/ Management is in violation of Article 21 of Constitution of India. The last drawn wages of the Petitioner was Rs. 1050/ - p.m. The permanent employees of the Respondent/ Management in the last grade are being paid Rs.14,000/- p.m. Hence is, therefore prayed that this Hon'ble Court may be pleased to pass an award directing the Respondent/ Management to reinstate the Petitioner and regularise and absorb him in the services of the Respondent/Management and pay him all past benefits as was paid to the permanent workman with all other consequent benefits including seniority, back wages etc.

3. The averments in the Counter Statement filed by the II Party/Management, Singapore Airlines Ltd. (hereinafter refers to as Respondent) are briefly as follows:—

A Ground Handling Agreement was entered into between M/s. Singapore Airlines and M/s. Air India in the year 1988, which was renewed from time to time. The Annexure B clause 4.2 of the agreement states that M/s. Air India, the handling company shall provide service personnel for handling baggage in the Respondent's aircrafts. Under above agreement, the Respondent is only referred to as the 'Carrier' and Air India as 'Handling Company'. Occasionally, when there are over crowding of passengers or arrival of baggage and if a personnel provided by Air India for handling baggage failed to report in time or absent, the Respondent will engage Casual Labourers purely on temporary basis for clearance of baggage, which will amount to an implied contractual engagement. Neither the Petitioner/Workman nor similarly placed persons claiming employment with the Respondent has been engaged on regular basis. The Respondent do not maintain any records relating to temporary/casual engagements, since such engagements arise occasionally. Such temporary engagement of Casual Labourers by the Respondent occasionally will not vest any right on the Petitioner/ Workman to claim benefits under Industrial Disputes Act, 1947 alleging contravention of Sections 25F and 25N of the said Act. Temporary, contractual engagements of Casual Labourers if at all will only fall within the ambit of Section 2(oo) (bb) of the Industrial Disputes Act, 1947, which is an exception to retrenchment. Hence, the non-employment of the Petitioner/Workman did not amount to retrenchment and he cannot claim any relief from the Respondent/ Management under Industrial Disputes Act, much less retrenchment compensation or re-employment. Inasmuch as, personnel for handling baggage for the aircrafts are provided by Air India, this Respondent/Management is not liable to give employment to the Petitioner. Neither the Petitioner nor similarly placed persons before the authority were engaged in any vacancy or post. There is no vacancy or post available with the Respondent to offer employment to the Petitioner/Workman. The claim of the Petitioner/ Workman is stale barred by laches and as such, the Petitioner is not entitled to seek benefits under Industrial Disputes Act from the Respondent. It is false to contend that the Petitioner joined the services of the Respondent/ Management for doing the work relating to both passenger and cargo transport. The Petitioner was engaged occasionally to handle over crowding of passengers or arrival of baggage. Therefore, it is incorrect to state that he was given duties as a loader to load the baggage in the aircraft and he was asked to work for baggage identification. M/s. Air India who is the handling company provides personnel for handling baggage of the Respondent aircrafts. There is no nexus of employer and employee relationship between the Petitioner and Respondent/Management. The Petitioner cannot maintain the industrial dispute in the absence of any positive proof of employer-employee relationship between him and the Respondent/Management and hence, it is liable to be dismissed in limini. It is denied that the Petitioner had completed 480 days of continuous service in a period of 24 calendar months from the year 1992. It was purely on a temporary basis, casual to meet the exigencies as mentioned earlier which will amount to an implied contract at the best. Hence, such engagement falls within the definition of Section 2(oo)(bb) of Industrial Disputes Act, 1947 and the question of issuance of notice and illegal termination does not arise much less retrenchment. The Petitioner has come forward with his petition alleging non-employment of the Respondent/

Management with an ulterior motive and malafide intention only to harass the Respondent for seeking monetary benefits. The alleged non-compliance of Section 25F and Section 25N of the Industrial Disputes Act, 1947 are all untenable and cannot be sustained. The Petitioner's counsel's notice dated 2-5-98 was suitably answered by the Respondent's counsel's reply dated 19-5-98. The allegations in the Claim Statement about the alleged occurrence on 4-5-98 in the Station Manager's cabin are denied as false. The notice dated 5-5-98 was suitably answered by the reply notice dated 5-6-98 issued through the counsel of the Respondent. The alleged termination of the services of the Petitioner and similarly placed persons does not amount to unfair labour practice. There is no illegal or malafide termination of service of the Petitioner, since he was employed only on a casual basis. The question of violation of Section 9A of the Industrial Disputes Act, 1947 does not arise in the facts and circumstances of the case. Since the Petitioner was engaged on casual basis as and when exigency arose, the question of paying monthly wages does not arise at all. The claims are all ill-founded, misconceived, untenable and consequently, the Petitioner is not entitled to any relief much less reinstatement in service, back wages, continuity of service attendant benefits. Hence, it is prayed that the claim of the Petitioner may be dismissed.

4. When the matter was taken up for enquiry on 17-9-2002, the counsel for the II Party/Management alone was present, neither the I Party nor his counsel on record present. No oral or documentary evidence was let in on either side. After it was reported by the learned counsel for the II Party/Management that they have no oral evidence, the evidence was closed and posted for arguments for the counsel on either side. After the case has been adjourned twice for advancing the arguments of learned counsel on either side and was taken finally on 10-10-2002, the counsel who appeared for the II Party/ Management had advanced his arguments and as the counsel for the I Party was not present to advance his arguments, it was held as no arguments for I Party and it was reserved for orders.

5. The point for my consideration is.—

"Whether the action of the management of M/s. Singapore Airlines Ltd., Chennai, in terminating the service of Sri N. Gunasekar from 5-5-98 is justified or not? If not justified, to what relief the workman is entitled?"

Point :—

It is the case of the Petitioner that he joined the services of the Singapore Airlines Ltd., for doing the work relating to both passenger and cargo transport and he was illegally denied employment w.e.f. 5-5-98 and that he has been employed continuously for more than 480 days within a period of 24 calendar months and that he was not paid retrenchment compensation and he was not given any notice in writing or wages in lieu of notice and hence such termination is bad for non-compliance of Section 25F of Industrial Disputes Act. The Respondent/Management would contend that a ground handling agreement was entered into between the Respondent and the Air India in the year 1988 which was renewed from time to time and that M/s. Air India, the Handling Company shall provide service personnel for handling baggage in the Respondent's Aircraft and that occasionally when there are over crowding of passengers or arrival of baggage and if personnel provided by the Air India for handling baggage failed to report in time or absent, the Respondent will engage Casual Labourers purely on temporary basis for clearance of baggage which would amount to an implied contractual engagement and hence, the workman like Petitioner have never been engaged on a regular basis and such temporary/ engagement of Casual Labourers by the Respondent occasionally will not vest any right on the Petitioner/ Workman to claim benefits under Industrial Disputes Act alleging contravention of Section 25F of the Industrial Disputes Act. It is further alleged that the non-employment of the Petitioner/Workman did not amount to retrenchment and he cannot claim any relief from the management under the Industrial Disputes Act much less retrenchment compensation or re-employment. It is also alleged by the Respondent/Management that the temporary contractual agreement for Casual Labourers if at all will only fall within the ambit of Section 2(oo)(bb) of the Industrial Disputes Act, 1947 which is an exception to retrenchment. Hence the Petitioner cannot claim any relief from the Respondent/ Management much less retrenchment compensation or re-employment. In support of the contention of the Respondent/Management in their Counter Statement, a xerox copy of the ground handling agreement entered into between the Singapore Airlines and Air India has been filed into Court, after furnishing a copy of the same to other side. It is not disputed on the side of the Petitioner. The Petitioner has not chosen to let in oral or documentary evidence in support of his contention in the Claim Statement. Except raising a plea in the Claim Statement that a notice was sent through his counsel to the Respondent/ Management and a reply has been received for the same from the counsel for the Respondent/Management, no evidence either oral or documentary has been let in, in support of that version. Apart from that there is absolutely no oral or documentary evidence on the side of the Petitioner/Workman to prove his alleged continuous service directly under the Respondent/Management. As per the contention of the Respondent/Management, no evidence worth considering has been let in by the Petitioner to show that there was employer-employee relationship existed between the Respondent/Management and the Petitioner/ Workman. In the Claim Statement also, the Petitioner has not given any particulars about the days he worked under

Respondent/Management in respect of the work relating to both passenger and cargo transport and on other capacities as a workman. He has simply stated in his Claim Statement that he has been employed continuously without any break for more than 480 days within a period of 24 calendar months. For his averment in the Claim Statement that he attended the work mentioned in the Claim Statement and that he worked continuously without any break for more than 480 days within a period of 24 calendar months, he has not produced any substantial evidence. It is the specific contention of the Respondent in the Counter Statement that the persons like the Petitioner were engaged by the Respondent, Singapore Airlines Ltd., as Casual Labourers purely on temporary basis for clearance of baggage as and when occasion arises and that the Respondent/Management used to engage Casual Labourers on daily wage basis at the time of heavy arrivals and departures of flights and such employment they used to make on temporary basis and they never used to engage them continuously for a period of 240 days in 12 calendar months. So from these contentions of either parties, it can be said that the allegation of the Petitioner that he had worked for more than 480 days continuously within a period of 24 calendar months is not correct. When the Petitioner has raised this claim to avail the relief prayed for in the claim petition from the Respondent/Management, he has to prove his plea in the Claim Statement with acceptable legal evidence that he had been employed continuously without any break for more than 480 days within a period of 24 calendar months. Thus, the Petitioner/Workman has not discharged his burden, though the onus is on him to prove that he had worked 480 days continuously in a period of 24 calendar months. The Respondent in their Counter Statement has stated that the Respondent/Management emphatically denies that the Petitioner has completed 240 days of continuous service in a period of 12 calendar months. The learned counsel for the Respondent had also argued that the Petitioner has failed to prove with acceptable legal evidence that he had worked for 240 days in a period of 12 calendar months/480 days continuously for a period of 24 calendar months. Hence, he cannot ask for the relief of reinstatement into service as that of a permanent workman. He had also relied upon a decision of Supreme Court reported as 2002 FACTORIES JOURNAL REPORT Vol.100 pg.397 between RANGE FOREST OFFICER and S.T. HADIMANI. In that case the Supreme Court has held that "since the claim of the workman that he had worked for 240 days was denied by the Management, it is for the workman to lead evidence to show that he had in fact, worked for 240 days and that in the absence of proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for that period, it cannot be concluded that the workman had in fact, worked for 240 days and the onus is on the workman to prove the claim with sufficient records and mere an affidavit is not sufficient." The decision of the Supreme Court in this case is quite applicable to the present case also. It is further argued by the learned counsel for the Respondent that the averment in the Counter Statement of the Respondent to that effect that the Respondent/Management had entered into ground handling agreement with Air India and in pursuance of the same, Air India has taken care of the ground handling work, which the Petitioner was said to have attended the work relating to both passenger and cargo transport, and the same has not been denied by the Petitioner. Though the period of work alleged by the Petitioner in his Claim Statement has been emphatically denied in the Counter Statement of the Respondent/ Management, the Petitioner has not chosen to prove his alleged period of service with acceptable legal oral or documentary evidence. It is further argued by the learned counsel for the Respondent that the people like the Petitioner/Workman have been engaged as a casual employees at the time of exigencies to meet the requirement or personnel for handling baggage for aircrafts during the period of over crowding of passengers or arrival of baggage and the personnel provided by Air India for that work failed to report in time or remains absent. This has not been disputed by the Petitioner as incorrect or false. The learned counsel would further contend that such casual employment would amount to only implied contractual agreement, which squarely comes under section 2(oo)(bb) of Industrial Disputes Act, 1947 which is an exception to retrenchment and hence there was no retrenchment in the case of the Petitioner's non-employment and he cannot claim any relief from the Respondent/Management under the Industrial Disputes Act, 1947, and that he cannot claim retrenchment compensation or re-employment. He would further argue that mere pleadings of the Petitioner in his Claim Statement that he was employed under the Respondent/Management for a particular period is not suffice and as per the decision of Madras High Court in a case reported as 2001 4 LLN 903 the Petitioner has to prove the pleadings by letting sufficient evidence. In the above cited case, the Hon'ble High Court of Madras has held that "the allegation which was not pleaded and even if evidence is adduced in that regard cannot be examined because the other side had no notice of it and if such evidence is entertained it would tantamount to granting unfair advantage to the party who had not pleaded his case properly". So from this, it is seen that argument advanced by the learned counsel for the Respondent/Management can be accepted as correct as there is no evidence to show in this case, on the side of the Petitioner, that he has been employed under the Respondent/Management Singapore Airlines and was in continuous employment for more than 480 days in a period of 24 calendar months. So, from all these things, it is seen that the Petitioner cannot ask for reinstatement in service. From the available evidence, it is seen that the Petitioner was engaged only as a casual workman by the Respondent/Management as and when occasion arises. So by the very nature of the employment

of the Petitioner, he has no assurance that he would be employed by the Respondent/Management for any specified duration. The persons like Petitioner temporary employment could not be for any period for which they can look forward to assured work from the employer. It is held by the High Court of Madras in a case reported as 2001 3 LLN 807 between L&T McNEIL LTD. MADRAS and PRESIDING OFFICER, MADRAS LABOUR COURT AND ANOTHER that "casual workmen have only to report each day and hope that employment would be provided to them on that day. Their not going to the place of employer will not result in any penalty as they are not assured of work daily. This kind of employment, therefore, cannot be treated on par with the temporary and permanent employment. The employers are not bound to provide work to casual workmen unless they choose to and there is work for the day. Directing reinstatement of casual workman who had worked as such, for a relatively short period of time, would only mean that their names would once again be included in the list of casual workmen putting them in the same position they were earlier, where they would only report for the employment with the hope being providing with the work and no more." This observation of the High Court of Madras in the above cited case is applicable to the facts of this case also.

6. The learned counsel for the Respondent/ Management had argued that the Petitioner has not at all pleaded in the Claim Statement that prior to the termination he had worked for 240 days continuously but it is his plea that he had worked 480 days in 24 calendar months and the same also has not been proved and that the Petitioner is not entitled for any permanent employment. Since he was engaged only as a casual worker as and when required due to the exigencies, the question of termination does not arise and hence they are not entitled to the relief of reinstatement also as a permanent employee of the Respondent/Management.

7. On the basis of the available materials in this case, the argument advanced by the Learned counsel for the Respondent/Management can be accepted as correct. Under such circumstances, it can be concluded that there is no question of termination of the service of the Petitioner by the Respondent/Management and the non-employment of the Petitioner does not amount to any retrenchment. Hence, it can be concluded that the non-employment of the Pettioner/Workman Sri N.Gunasekar by the Respondent/Management, Singapore Airlines Ltd., Chennai, is justified and hence the concerned workman is not entitled to any relief. Thus, the point is answered accordingly.

8. In the result, an Award is passed holding that the I Party/Workman Sri N.Gunasekar is not entitled for any relief. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 20th November, 2002.)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined :—

On either side : None

Exhibits marked :—

On either side : Nil

नई दिल्ली, 11 दिसम्बर, 2002

का. आ. 34.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंगापुर एअरलाईंस लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पंचाट (संदर्भ संख्या 685/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-12-2002 को प्राप्त हुआ था।

[सं. एल-11012/4/99-आई.आर.(सी.-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 11th December, 2002

S.O. 34.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 685/2001) of the Central Government Industrial Tribunal, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Singapur Airlines Ltd. and their workman, which was received by the Central Government on 9-12-2002.

[No. L-11012/4/99-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 20th November, 2002

PRESENT:

SHRI K. KARTHIKEYAN,

PRESIDING OFFICER

INDUSTRIAL DISPUTE NO. 685/2001

(Tamil Nadu Principal Labour Court CGIT No. 323/99)

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Workman Sri D. Rosaiah and the Managing Director, Singapore Airlines Ltd., Chennai.]

BETWEEN

Sri D. Rosaiah : I Party/Workman

AND

The Managing Director, Management Singapore Airlines Ltd., Chennai.	:	II Party/Management

APPEARANCE:

For the Workman	:	M/s. V-Prakash and P. Ramkumar and A. Lakshmi, Advocates.
For the Management	:	M/s. King & Partridge, Advocate

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947), have referred the concerned dispute for adjudication vide Order No. L-11012/4/99-IR (CM-I) dated 18-5-1999.

This reference has been made earlier to the Tamil Nadu Principal Labour Court, Chennai, where it was taken on file as CGID No. 323/99. When the matter was pending enquiry in that Labour Court, as per the orders of the Central Government, Ministry of Labour this case has also been transferred from the file of Tamil Nadu Principal Labour Court to this Tribunal for adjudication. On receipt of records from that Principal Labour Court, this case has been taken on file as I.D. No. 685/2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 16-10-2001 with their respective parties and to prosecute this case further. Accordingly, the learned counsel on either side along with their respective parties have appeared and prosecuted this case. The Claim Statement of the I Party/Workman and the Counter Statement of the II Party/Management were filed, when this matter was pending before the Tamil Nadu Principal Labour Court itself.

Upon perusing the Claim Statement, Counter Statement, the other material papers on record, after hearing the arguments advanced by the learned counsel for the II Party/Management and this matter having stood over till this date for consideration, this Tribunal has passed the following :—

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt. for adjudication by this Tribunal is as follows : —

> "Whether the action of the management of M/s. Singapore Airlines Ltd., Chennai, in terminating the service of Sri D. Rosaiah from 5-5-98 is justified or not? If not justified, to what relief the workman is entitled?"

2. The averments in the Claim Statement filed by the I Party/Workman Sri D. Rosaiah (hereinafter refers to as Petitioner) are briefly as follows :—

The Petitioner has been working in the Madras Airport employed by M/s. Singapore Airlines Ltd. II Party/ Management (hereinafter refers to as Respondent) for doing the work relating to both passenger and cargo transport. He does the work of wheel chair assistance for handicapped passengers, assistance in the ticket checking counter for taking the baggage, putting the baggage tag on and putting them on conveyor belt and ensuring proper movement of these articles on the conveyor belt and thereafter removing the same from the Conveyor belt and doing the baggage make up i.e. ensuring proper loading of these baggage into the containers. He has also done the ground duties i.e. ramp work, high loading and bulk loading and when the flight lands, he does the break up of the baggage and ensuring that they are loaded into the containers for the same to be picked up by disembarking passengers. He has also done the special handling work in respect of first class and business class passengers. With regard to cargo flights he did loading and off loading and palletising. For the aforesaid work, the Petitioner has been employed continuously without any break " for more than 480 days within a period of 24 calendar months. He was employed continuously from the year 1993 till the date of his termination. On 2-5-98 a notice by the Petitioner and other similarly placed workmen was issued through a counsel to the II Party/Management M/s. Singapore Airlines Ltd. seeking that the Petitioners may be made permanent and the management should not attempt to bring in a contractor in a relationship that was hitherto direct. Then, when the Petitioner along with similarly placed workmen reported for duty on 4-5-98, Mr. Lim Thom Cheng the Station Manager and Mr. Srinivasan the Assistant Station Manager of the II Party/Management at Anna International Airport, Chennai, called the workmen into the Station Manager's cabin locked the door and scolded the workmen for having gone to the lawyer and thereafter took away the temporary passes issued to them by the Bureau of Civil Aviation Authority, Chennai. Thereafter, they were asked to go out. This was done after they had completed their work for the departure of the Singapore Airlines flight. They were kept inside the Manager's cabin from 00.00 hours to 02.00 hours on the night of 4th/5th May, 1998. The workers were during that time asked either to sign on the contract agreeing to work under the contractor or failing which it was said that their services stood terminated. Significantly, the Petitioner employed by the II Party/Management from 1993 who was not one of the workmen involved in the notice was given back his temporary pass issued by the Bureau of Civil Aviation Security, Chennai. Mr. Somu and Mr. Anantharaman did not attend the work on 4-5-98 and hence their passes were not taken. However, when the Petitioner reported for duty on the next day i.e. on 5-5-98 he was

denied employment by the II Party/Management. Thus, the Petitioner and similarly placed workmen were terminated from service without any notice and solely with a view to victimise the Petitioner for claiming permanency and other labour welfare benefits to which he is entitled to under the various labour welfare legislations. Immediately thereafter on 5th May, 1998, a lawyer's notice was issued to the Singapore Airlines and various other officials including Mr. Lmi Thong Cheng and Mr. Srinivasan objecting to the Petitioner's termination and the termination of service of similarly placed workmen like the Petitioner in the circumstances done and seeking reinstatement with all consequential benefits including permanency and by mentioning that they have committed unfair labour practice. A reply was issued on behalf of the management through their counsel on 19-5-98. In that reply, the termination of the Petitioner and others from service had not been denied. Then the Petitioner raised an industrial dispute under section 2A of the Act before the Assistant Labour Commissioner (Central) Chennai. The impugned termination of the Petitioner from service w.e.f. 5-5-98 is arbitrary, illegal, capricious and whimsical. The Petitioner has been victimised for trying to assert his rights conferred on him under various labour welfare legislations. The action of the Respondent in terminating the Petitioner amounts to retrenchment within the meaning of Section 2(oo) of Industrial Disputes Act, 1947. The Respondent has not complied with the conditions precedent mandated under section 25F of the Act. The action of the Respondent in seeking to introduce contract labour system in a relationship which was hitherto direct amounts to changing the service conditions for which statutory notice under section 9A had not been given. It is an offence as per the provisions of Industrial Disputes Act, 1947. The Respondent/Management is not justified in refusing to confer permanency on the Petitioner and similarly placed workmen even though they had been working continuously for a very long period of time. The action of the Respondent/ Management is in violation of Article 21 of Constitution of India. The last drawn wages of the Petitioner was Rs. 1050- p.m. The permanent employees of the Respondent/ Management in the last grade are being paid Rs. 14,000/- p.m. Hence is, therefore prayed that this Hon'ble Court may be pleased to pass an award directing the Respondent/ Management to reinstate the Petitioner and regularise and absorb him in the services of the Respondent/Management and pay him all past benefits as was paid to the permanent workman with all other consequent benefits including seniority, back wages etc.

3. The averments in the Counter Statement filed by the II Party/Management, Singapore Airlines Ltd. (hereinafter refers to as Respondent) are briefly as follows:-

A Ground Handling Agreement was entered into between M/s. Singapore Airlines and M/s. Air India in the year 1988, which was renewed from time to time. The Annexure B clause 4.2 of the agreement states that M/s. Air India, the handling company shall provide service personnel for handling baggage in the Respondent's aircrafts. Under above agreement, the Respondent is only referred to as the 'Carrier' and Air India as 'Handling Company'. Occasionally, when there are over crowding of passengers or arrival of baggage and if a personnel provided by Air India for handling baggage failed to report in time or absent, the Respondent will engage Casual Labourers purely on temporary basis for clearance of baggage, which will amount to an implied contractual engagement. Neither the Petitioner/Workman nor similarly placed persons claiming employment with the Respondent has been engaged on regular basis. The Respondent do not maintain any records relating to temporary/casual engagements, since such engagements arise occasionally. Such temporary engagement of Casual Labourers by the Respondent occasionally will not vest any right on the Petitioner/ Workman to claim benefits under Industrial Disputes Act, 1947 alleging contravention of Section 25F and 25N of the said Act. Temporary, contractual engagements of Casual Labourers if at all will only fall within the ambit of Section 2(oo) (bb) of the Industrial Disputes Act, 1947, which is an exception to retrenchment. Hence, the non-employment of the Petitioner/Workman did not amount to retrenchment and he cannot claim any relief from the Respondent/ Management under Industrial Disputes Act, much less retrenchment compensation or re-employment. Inasmuch as, personnel for handling baggage for the aircrafts are provided by Air India, this Respondent/Management is not liable to give employment to the Petitioner. Neither the Petitioner nor similarly placed persons before the authority were engaged in any vacancy or post. There is no vacancy or post available with the Respondent to offer employment to the Petitioner/Workman. The claim of the Petitioner/ Workman is stale barred by laches and as such, the Petitioner is not entitled to seek benefits under Industrial Disputes Act from the Respondent. It is false to contend that the Petitioner joined the services of the Respondent/ Management for doing the work relating to both passenger and cargo transport. The Petitioner was engaged occasionally to handle over crowding of passengers or arrival of baggage. Therefore, it is incorrect to state that he was given duties as a loader to load the baggage in the aircraft and he was asked to work for baggage identification. M/s. Air India who is the handling company provides personnel for handling baggage of the Respondent aircrafts. There is no nexus of employer and employee relationship between the Petitioner and Respondent/Management. The Petitioner cannot maintain the industrial dispute in the absence of any positive proof of employer-employee relationship between him and the Respondent/Management and hence, it is liable to be dismissed in limini. It is denied that the Petitioner had completed 480 days of continuous service in a period of 24 calendar months from the year 1992. It was purely on a temporary basis, casual to meet the

exigencies as mentioned earlier which will amount to an implied contract at the best. Hence, such engagement falls within the definition of Section 2(oo)(bb) of Industrial Disputes Act, 1947 and the question of issuance of notice and illegal termination does not arise much less retrenchment. The Petitioner has come forward with his petition alleging non-employment of the Respondent/ Management with an ulterior motive and mala fide intention only to harass the Respondent for seeking monetary benefits. The alleged non-compliance of Section 25F and Section 25N of the Industrial Disputes Act, 1947 are all untenable and cannot be sustained. The Petitioner's counsel's notice dated 2-5-98 was suitably answered by the Respondent's counsel's reply dated 19-5-98. The allegations in the Claim Statement about the alleged occurrence on 4-5-98 in the Station Manager's cabin are denied as false. The notice dated 5-5-98 was suitably answered by the reply notice dated 5-6-98 issued through the counsel of the Respondent. The alleged termination of the services of the Petitioner and similarly placed persons does not amount to unfair labour practice. There is no illegal or mala fide termination of service of the Petitioner, since he was employed only on a casual basis. The question of violation of Section 9A of the Industrial Disputes Act, 1947 does not arise in the facts and circumstances of the case. Since the Petitioner was engaged on casual basis as and when exigency arose, the question of paying monthly wages does not arise at all. The claims are all ill-founded, misconceived, untenable and consequently, the Petitioner is not entitled to any relief much less reinstatement in service, back wages, continuity of service attendant benefits. Hence, it is prayed that the claim of the Petitioner may be dismissed.

4. When the matter was taken up for enquiry on 17-9-2002, the counsel for the II Party/Management alone was present, neither the I Party nor his counsel on record present. No oral or documentary evidence was let in on either side. After it was reported by the learned counsel for the II Party/Management that they have no oral evidence, the evidence was closed and posted for arguments for the counsel on either side. After the case has been adjourned twice for advancing the arguments of learned counsel on either side and was taken finally on 10-10-2002, the counsel who appeared for the II Party/ Management had advanced his arguments and as the counsel for the I Party was not present to advance his arguments, it was held as no arguments for I Party and it was reserved for orders.

5. The point for my consideration is -

"Whether the action of the management of M/s. Singapore Airlines Ltd., Chennai, in terminating the service of Sri D.Rosaiah from 5-5-98 is justified or not? If not justified, to what relief the workman is entitled?"

Point :—

It is the case of the Petitioner that he joined the services of the Singapore Airlines Ltd. for doing the work relating to both passenger and cargo transport and he was illegally denied employment w.e.f. 5-5-98 and that he has been employed continuously for more than 480 days within a period of 24 calendar months and that he was not paid retrenchment compensation and he was not given any notice in writing or wages in lieu of notice and hence such termination is bad for non-compliance of Section 25F of Industrial Disputes Act. The Respondent/Management would contend that a ground handling agreement was entered into between the Respondent and the Air India in the year 1988 which was renewed from time to time and that M/s. Air India, the Handling Company shall provide service personnel for handling baggage in the Respondent's Aircraft and that occasionally when there are over crowding of passengers or arrival of baggage and if personnel provided by the Air India for handling baggage failed to report in time or absent, the Respondent will engage Casual Labourers purely on temporary basis for clearance of baggage which would amount to an implied contractual engagement and hence, the workman like Petitioner have never been engaged on a regular basis and such temporary engagement of Casual Labourers by the Respondent occasionally will not vest any right on the Petitioner/ Workman to claim benefits under Industrial Disputes Act alleging contravention of Section 25F of Industrial Disputes Act. It is further alleged that the non-employment of the Petitioner/Workman did not amount to retrenchment and he cannot claim any relief from the management under the Industrial Disputes Act much less retrenchment compensation or re-employment. It is also alleged by the Respondent/Management that the temporary contractual agreement for Casual Labourers if at all will only fall within the ambit of Section 2(oo)(bb) of the Industrial Disputes Act, 1947 which is an exception to retrenchment. Hence the Petitioner cannot claim any relief from the Respondent/ Management much less retrenchment compensation or re-employment. In support of the contention of the Respondent/Management in their Counter Statement, a xerox copy of the ground handling agreement entered into between the Singapore Airlines and Air India has been filed into Court, after furnishing a copy of the same to other side. It is not disputed on the side of the Petitioner. The Petitioner has not chosen to let in oral or documentary evidence in support of his contention in the Claim Statement. Except raising a plea in the Claim Statement that a notice was sent through his counsel to the Respondent/ Management and a reply has been received for the same from the counsel for the Respondent/Management, no evidence either oral or documentary has been let in, in support of that version. Apart from that there is absolutely no oral or documentary evidence on the side of the Petitioner/Workman to prove his alleged continuous service

directly under the Respondent/Management. As per the contention of the Respondent/Management, no evidence worth considering has been let in by the Petitioner to show that there was employer-employee relationship existed between the Respondent/Management and the Petitioner/ Workman. In the Claim Statement also, the Petitioner has not given any particulars about the days he worked under Respondent/Management in respect of the work relating to both passenger and cargo transport and on other capacities as a workman. He has simply stated on his Claim Statement that he has been employed continuously without any break for more than 480 days within a period of 24 calendar months. For his averment in the Claim Statement that he attended the work mentioned in the Claim Statement and that he worked continuously without any break for more than 480 days within a period of 24 calendar months, he has not produced any substantial evidence. It is the specific contention of the Respondent in the Counter Statement that the persons like the Petitioner were engaged by the Respondent, Singapore Airlines Ltd. as Casual Labourers purely on temporary basis for clearance of baggage as and when occasion arises and that the Respondent/Management used to engage Casual Labourers on daily wage basis at the time of heavy arrivals and departures of flights and such employment they used to make on temporary basis and they never used to engage them continuously for a period of 240 days in 12 calendar months. So from these contentions of either parties, it can be said that the allegation of the Petitioner that he had worked for more than 480 days continuously within a period of 24 calendar months is not correct. When the Petitioner has raised this claim to avail the relief prayed for in the claim petition from the Respondent/Management, he has to prove his plea in the Claim Statement with acceptable legal evidence that he had been employed continuously without any break for more than 480 days within a period of 24 calendar months. Thus, the Petitioner/Workman has not discharged his burden, though the onus is on him to prove that he had worked 480 days continuously in a period of 24 calendar months. The Respondent in their Counter Statement has stated that the Respondent/Management emphatically denies that the Petitioner has completed 240 days of continuous service in a period of 12 calendar months. The learned counsel for the Respondent had also argued that the Petitioner has failed to prove with acceptable legal evidence that he had worked for 240 days in a period of 12 calendar months/480 days continuously for a period of 24 calendar months. Hence, he cannot ask for the relief of reinstatement into service as that of a permanent workman. He had also relied upon a decision of Supreme Court reported as 2002 FACTORIES JOURNAL REPORT Vol.100 pg.397 between Range Forest Officer and S.T. Hadimani. In that case the Supreme Court has held that "since the claim of the workman that he had worked for 240 days was denied by the Management, it is for the workman to lead evidence to show that he had in fact, worked for 240 days and that in the absence of proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for that period, it cannot be concluded that the workman had in fact, worked for 240 days and the onus is on the workman to prove the claim with sufficient records and mere an affidavit is not sufficient." The decision of the Supreme Court in this case is quite applicable to the present case also. It is further argued by the learned counsel for the Respondent that the averment in the Counter Statement of the Respondent to that effect that the Respondent/Management had entered into ground handling agreement with Air India and in pursuance of the same, Air India has taken care of the ground handling work, which the Petitioner was said to have attended the work relating to both passenger and cargo transport, and the same has not been denied by the Petitioner. Though the period of work alleged by the Petitioner in his Claim Statement has been emphatically denied in the Counter Statement of the Respondent/ Management, the Petitioner has not chosen to prove his alleged period of service with acceptable legal oral or documentary evidence. It is further argued by the learned counsel for the Respondent that the people like the Petitioner/Workman have been engaged as a casual employees at the time of exigencies to meet the requirement or personnel for handling baggage for aircrafts during the period of over crowding of passengers or arrival of baggage and the personnel provided by Air India for that work failed to report in time or remains absent. This has not been disputed by the Petitioner as incorrect or false. The learned counsel would further contend that such casual employment would amount to only implied contractual agreement, which squarely comes under section 2(oo)(bb) of Industrial Disputes Act, 1947 which is an exception to retrenchment and hence there was no retrenchment in the case of the Petitioner's non-employment and he cannot claim any relief from the Respondent/Management under the Industrial Disputes Act, 1947 and that he cannot claim retrenchment compensation or re-employment. He would further argue that mere pleadings of the Petitioner in his Claim Statement that he was employed under the Respondent/Management for a particular period is not suffice and as per the decision of Madras High Court in a case reported as 2001 4 LLN 903 the Petitioner has to prove the pleadings by letting sufficient evidence. In the above cited case, the Hon'ble High Court of Madras has held that "the allegation which was not pleaded and even if evidence is adduced in that regard cannot be examined because the other side had no notice of it and if such evidence is entertained it would tantamount to granting unfair advantage to the party who had not pleaded his case properly". So from this, it is seen that argument advanced by the learned counsel for the Respondent/Management can be accepted as correct as there is no evidence to show in this case, on the side of the Petitioner, that he has been employed under the Respondent/Management Singapore

Airlines and was in continuous employment for more than 480 days in a period of 24 calendar months. So, from all these things, it is seen that the Petitioner cannot ask for reinstatement in service. From the available evidence, it is seen that the Petitioner was engaged only as a casual workman by the Respondent/Management as and when occasion arises. So by the very nature of the employment of the Petitioner, he has no assurance that he would be employed by the Respondent/Management for any specified duration. The persons like Petitioner temporary employment could not be for any period for which they can look forward to assured work from the employer. It is held by the High Court of Madras in a case reported as 2001 3 LLN 807 between L &T T McNEIL LTD. MADRAS and PRESIDING OFFICER, MADRAS LABOUR COURT AND ANOTHER that "casual workmen have only to report each day and hope that employment would be provided to them on that day. Their not going to the place of employer will not result in any penalty as they are not assured of work daily. This kind of employment, therefore, cannot be treated on par with the temporary and permanent employment. The employers are not bound to provide work to casual workmen unless they choose to and there is work for the day. Directing reinstatement of casual workman who had worked as such, for a relatively short period of time, would only mean that their names would once again be included in the list of casual workmen putting them in the same position they were earlier, where they would only report for the employment with the hope being providing with the work and no more." This observation of the High Court of Madras in the above cited case is applicable to the facts of this case also.

6. The learned counsel for the Respondent/ Management had argued that the Petitioner has not at all pleaded in the Claim Statement that prior to the termination he had worked for 240 days continuously but it is his plea that he had worked 480 days in 24 calendar months and the same also has not been proved and that the Petitioner is not entitled for any permanent employment. Since he was engaged only as a casual worker as and when required due to the exigencies, the question of termination does not arise and hence they are not entitled to the relief of reinstatement also as a permanent employee of the Respondent/Management.

7. On the basis of the available materials in this case, the argument advanced by the learned counsel for the Respondent/Management can be accepted as correct. Under such circumstances, it can be concluded that there is no question of termination of the service of the Petitioner by the Respondent/Management and the non-employment of the Petitioner does not amount to any retrenchment. Hence, it can be concluded that the non-employment of the Petitioner/ Workman Sri D. Rosaiah by the Respondent/ Management, Singapore Airlines Ltd., Chennai is justified and hence the concerned workman is not entitled to any relief. Thus, the point is answered accordingly.

8. In the result, an Award is passed holding that the I Party/Workman Sri D. Rosaiah is not entitled for any relief. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 20th November, 2002.)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined :—
On either side : None

Exhibits marked :—
On either side : Nil

नई दिल्ली, 11 दिसम्बर, 2002

का. आ. 35.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंगापुर एअरलाईंस लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पंचाट (संदर्भ संख्या 684/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-12-2002 को प्राप्त हुआ था।

[सं. एल-11012/5/99-आई.आर.(सी.-1)]
एस. एस. गुप्ता, अवर सचिव

New Delhi, the 11th December, 2002

S.O. 35.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 684/2001) of the Central Government Industrial Tribunal Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Singapur Airlines Ltd. and their workman, which was received by the Central Government on 9-12-2002.

[No. L-11012/5/99-IR (C-I)]
S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-BABOUR COURT, CHENNAI

Wednesday, the 20th November, 2002

PRESENT:

SHRI K. KARTHIKEYAN,
PRESIDING OFFICER

INDUSTRIAL DISPUTE NO. 684/2001

(Tamil Nadu Principal Labour Court CGID No. 322/99)

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Workman Sri C. Kumar and the Managing Director, Singapore Airlines Ltd., Chennai.]

BETWEEN

Sri C. Kumar	:	I Party/Workman

AND

The Managing Director, Singapore Airlines Ltd., Chennai.	:	II Party/Management

APPEARANCE:

For the Workman	:	M/s. V.Prakash & P. Ramkumar & A. Lakshmi, Advocates.
For the Management	:	M/s. King & Partridge, Advocate

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and Sub-section (2A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947), have referred the concerned dispute for adjudication vide Order No. L-11012/5/99/IR (CM-I) dated 18-5-1999.

This reference has been made earlier to the Tamil Nadu Principal Labour Court, Chennai, where it was taken on file as CGIT No. 322/99. When the matter was pending enquiry in that Labour Court, as per the orders of the Central Government, Ministry of Labour this case has also been transferred from the file of Tamil Nadu Principal Labour Court to this Tribunal for adjudication. On receipt of records from that Principal Labour Court, this case has been taken on file as I.D. No. 684/2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 16-10-2001 with their respective parties and to prosecute this case further. Accordingly, the learned counsel on either side along with their respective parties have appeared and prosecuted this case. The Claim Statement of the I Party/Workman and the Counter Statement of the II Party/Management were filed, when this matter was pending before the Tamil Nadu Principal Labour Court itself.

Upon perusing the Claim Statement, Counter Statement, the other material papers on record, after hearing the arguments advanced by the learned counsel for the II Party/Management and this matter having stood over till this date for consideration, this Tribunal has passed the following:-

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt. for adjudication by this Tribunal is as follows: -

"Whether the action of the management of M/s. Singapore Airlines Ltd., Chennai, in terminating the service of Sri C.Kumar from 5-5-98 is justified or not? If not justified, to what relief the workman is entitled?"

2. The averments in the Claim Statement filed by the I Party/Workman Sri C. Kumar (hereinafter refers to as Petitioner) are briefly as follows:-

The Petitioner has been working in the Madras Airport employed by M/s. Singapore Airlines Ltd. II Party/ Management (hereinafter refers to as Respondent) for doing the work relating to both passenger and cargo transport. He does the work of wheel chair assistance for handicapped passengers, assistance in the ticket checking counter for taking the baggage, putting the baggage tag on and putting them on conveyor belt and ensuring proper movement of these articles on the conveyor belt and thereafter removing the same from the Conveyor belt and doing the baggage make up i.e. ensuring proper loading of these baggage into the containers. He has also done the ground duties i.e. ramp work, high loading and bulk loading and when the flight lands, he does the break up of the baggage and ensuring that they are loaded into the containers for the same to be picked up by disembarking passengers. He has also done the special handling work in respect of first class and business class passengers. With regard to cargo flights he did loading and off loading and palletising. For the aforesaid work, the Petitioner has been employed continuously without any break for more than 480 days within a period of 24 calendar months. He was employed continuously from the year 1992 till the date of his termination. On 2-5-98 a notice by the Petitioner and other similarly placed workmen was issued through a counsel to the II Party/Management M/s. Singapore Airlines Ltd. seeking that the Petitioners may be made permanent and the management should not attempt to bring in a contractor in a relationship that was hitherto direct. Then, when the Petitioner along with similarly placed workmen reported for duty on 4-5-98, Mr. Lim Thom Cheng the Station Manager and Mr. Srinivasan the Assistant Station Manager of the II Party/Management at Anna International Airport, Chennai, called the workmen into the Station Manager's cabin locked the door and scolded the workmen for having gone to the lawyer and thereafter took away the temporary passes issued to them by the Bureau of Civil Aviation Authority, Chennai. Thereafter, they were asked to go out. This was done after they had completed their work for the departure of the Singapore Airlines flight. They were kept inside the Manager's cabin from 00.00 hours to 02.00 hours on the night of 4th/5th May, 1998. The workers were during that time asked either to sign on the contract agreeing to work under the contractor or failing which it was said that their services stood terminated. Significantly, Mr. Rosaiah, S/o. Mr. Devaiyah employed by the II Party/Management

from 1993 who was not one of the workmen involved in the notice was given back his temporary pass issued by the Bureau of Civil Aviation Security, Chennai. Mr. Somu and Mr. Anantharaman did not attend the work on 4-5-98 and hence their passes were not taken. However, when the Petitioner reported for duty on the next day i.e. on 5-5-98 he was denied employment by the II Party/Management. Thus, the Petitioner and similarly placed workmen were terminated from service without any notice and solely with a view to victimise the Petitioner for claiming permanency and other labour welfare benefits to which he is entitled to under the various labour welfare legislations. Immediately thereafter on 5th May, 1998, a lawyer's notice was issued to the Singapore Airlines and various other officials including Mr. Lim Thong Cheng and Mr. Srinivasan objecting to the Petitioner's termination and the termination of service of similarly placed workmen like the Petitioner in the circumstances done and seeking reinstatement with all consequential benefits including permanency and by mentioning that they have committed unfair labour practice. A reply was issued on behalf of the management through their counsel on 19.5.98. In that reply, the termination of the Petitioner and others from service had not been denied. Then the Petitioner raised an industrial dispute under section 2A of the Act before the Assistant Labour Commissioner (Central) Chennai. The impugned termination of the Petitioner from service w.e.f. 5.5.98 is arbitrary, illegal, capricious and whimsical. The Petitioner has been victimised for trying to assert his rights conferred on him under various labour welfare legislations. The action of the Respondent in terminating the Petitioner amounts to retrenchment within the meaning of Section 2 (oo) of Industrial Disputes Act, 1947. The Respondent has not complied with the conditions precedent mandated under section 25F of the Act. The action of the Respondent in seeking to introduce contract labour system in a relationship which was hitherto direct amounts to changing the service conditions for which statutory notice under section 9A had not been given. It is an offence as per the provisions of Industrial Disputes Act, 1947. The Respondent/Management is not justified in refusing to confer permanency on the Petitioner and similiarly placed workmen even though they had been working continuously for a very long period of time. The action of the Respondent/ Management is in violation of Article 21 of Constitution of India. The last drawn wages of the Petitioner was Rs.1050/ p.m. The permanent employees of the Respondent/ Management in the last grade are being paid Rs.14,000/- Hence is, therefore prayed that this Hon'ble Court may be pleased to pass an award directing the Respondent/ Management to reinstate the Petitioner and regularise and absorb him in the services of the Respondent/Management and pay him all past benefits as was paid to the permanent workman with all other consequent benefits including seniority, back wages etc.

3. The avements in the Counter Statement filed by the II Party/Management, Singapore Airlines Ltd. (hereinafter refers to as Respondent) are briefly as follows:—

A Ground Handling Agreement was entered into between M/s. Singapore Airlines and M/s. Air India in the year 1988, which was renewed from time to time. The Annexure B clause 4.2 of the agreement states that M/s. Air India, the handling company shall provide service personnel for handling baggage in the Respondent's aircrafts. Under above agreement, the Respondent is only referred to as the 'Carrier' and Air India as 'Handling Company'. Occasionally, when there are over crowding of passengers or arrival of baggage and if a personnel provided by Air India for handling baggage failed to report in time or absent, the Respondent will engage Casual Labourers purely on temporary basis for clearance of baggage, which will amount to an implied contractual engagement. Neither the Petitioner/Workman nor similarly placed persons claiming employment with the Respondent has been engaged on regular basis. The Respondent do not maintain any records relating to temporary/casual engagements, since such engagements arise occasionaliy. Such temporary engagement of Casual Labourers by the Respondent occasionaliy will not vest any right on the Petitioner/ Workman to claim benefits under Industrial Disputes Act, 1947 alleging contravention of Section 25F and 25N of the said Act. Temporary, contractual engagements of Casual Labourers if at all will only fall within the ambit of Section 2 (oo) (bb) of the Industrial Disputes Act, 1947 which is an exception to retrenchment. Hence, the non-employment of the Petitioner/Workman did not amount to retrenchment and he cannot claim any relief from the Respondent/ Management under Industrial Disputes Act, much less retrenchment compensation or reemployment. Inasmuch as, personnel for handling baggage for the aircrafts are provided by Air India, this Respondent/Management is not liable to give employment to the Petitioner. Neither the Petitioner nor similarly placed persons before the authority were engaged in any vacancy or post. There is no vacancy or post available with the Respondent to offer employment to the Petitioner/Workman. The claim of the Petitioner/ Workman is stale barred by laches and as such, the Petitioner is not entitled to seek benefits under Industrial Disputes Act from the Respondent. It is false to contend that the Petitioner joined the services of the Respondent/ Management for doing the work relating to both passenger and cargo transport. The Petitioner was engaged occasionally to handle over crowding of passengers or arrival of baggage. Therefore, it is incorrect to state that he was given duties as a loader to load the baggage in the aircraft and he was asked to work for baggage identification. M/s. Air India who is the handling company provides personnel for handling baggage of the Respondent aircrafts. There is no nexus of employer and employee relationship between the Petitioner and Respondent/Management. The Petitioner cannot maintain the industrial dispute in the

absence of any positive proof of employer-employee relationship between him and the Respondent/Management and hence, it is liable to be dismissed in limini. It is denied that the Petitioner had completed 480 days of continuous service in a period of 24 calendar months from the year 1992. It was purely on a temporary basis, casual to meet the exigencies as mentioned earlier which will amount to an implied contract at the best. Hence, such engagement falls within the definition of Section 2(oo)(bb) of Industrial Disputes Act. 1947 and the question of issuance of notice and illegal termination does not arise much less retrenchment. The Petitioner has come forward with his petition alleging non-employment of the Respondent/ Management with an ulterior motive and malafide intention only to harass the Respondent for seeking monetary benefits. The alleged non-compliance of Section 25F and Section 25N of the Industrial Disputes Act, 1947 are all untenable and cannot be sustained. The Petitioner's counsel's notice dated 2-5-98 was suitably answered by the Respondent's counsel's reply dated 19-5-98. The allegations in the Claim Statement about the alleged occurrence on 4-5-98 in the Station Manager's cabin are denied as false. The notice dated 5-5-98 was suitably answered by the reply notice dated 5-6-98 issued through the counsel of the Respondent. The alleged termination of the services of the Petitioner and similarly placed persons does not amount to unfair labour practice. There is no illegal or malafide termination of service of the Petitioner, since he was employed only on a casual basis. The question of violation of Section 9A of the Industrial Disputes Act, 1947 does not arise in the facts and circumstances of the case. Since the Petitioner was engaged on casual basis as and when exigency arose, the question of paying monthly wages does not arise at all. The claims are all ill-founded, misconceived, untenable and consequently, the Petitioner is not entitled to any relief much less reinstatement in service, back wages, continuity of service attendant benefits. Hence, it is prayed that the claim of the Petitioner may be dismissed.

4. When the matter was taken up for enquiry on 17-09-2002, the counsel for the II Party/Management alone was present, neither the I Party nor his counsel on record present. No oral or documentary evidence was let in on either side. After it was reported by the learned counsel for the II Party/Management that they have no oral evidence, the evidence was closed and posted for arguments for the counsel on either side. After the case has been adjourned twice for advancing the arguments of learned counsel on either side and was taken finally on 10-10-2002, the counsel who appeared for the II Party/Management had advanced his arguments and as the counsel for the I Party was not present to advance his arguments, it was held as no arguments for I Party and it was reserved for orders.

5. The point for my consideration is—

"Whether the action of the management of M/s. Singapore Airlines Ltd., Chennai, in terminating the service of Sri C. Kumar from 05-05-98 is justified or not? It not justified, to what relief the workman is entitled?"

Point :—

It is the case of the Petitioner that he joined the services of the Singapore Airlines Ltd. for doing the work relating to both passenger and cargo transport and he was illegally denied employment w.e.f. 05-05-98 and that he has been employed continuously for more than 480 days within a period of 24 calendar months and that he was not paid retrenchment compensation and he was not given any notice in writing or wages in lieu of notice and hence such termination is bad for non-compliance of Section 25F of Industrial Disputes Act. The Respondent/ Management would contend that a groud handling agreement was entered into between the Respondent and the Air India in the year 1988 which was renewed from time to time and that M/s. Air India the Handling Company shall provide service personnel for handling baggage in the Respondent's Aircraft and that occasionally when there are over crowding of passengers or arrival of baggage and if personnel provide by the Air India for handling baggage failed to report in time or absent, the Respondent will engage Casual Labourers purely on temporary basis for clearance of baggage which would amount to an implied contractual engagement and hence, the workman like Petitioner have never been engaged on a regular basis and such temporary engagement of Casual Labourers by the Respondent occasionally will not vest any right on the Petitioner/ Workman to claim benefits under Industrial Disputes Act alleging contravention of Section 25F of Industrial Disputes Act. It is further alleged that the non-employment of the Petitioner/Workman did not amount to retrenchment and he cannot claim any relief from the management under the Industrial Disputes Act much less retrenchment compensation or re-employment. It is also alleged by the Respondent/Management that the temporary contractual agreement for Casual Labourers if at all will only fall within the ambit of Section 2 (oo) (bb) of the Industrial Disputes Act, 1947 which is an exception to retrenchment. Hence the Petitioner cannot claim any relief from the Respondent/Management much less retrenchment compensation or re-employment. In support of the contention of the Respondent/Management in their Counter Statement, a xerox copy of the ground handling agreement entered into between the Singapur Airlines and Air India has been filed into Court, after furnishing a copy of the same to other side. It is not disputed on the side of the Petitioner. The Petitioner has not chosen to let in oral or documentary evidence in support of his contention

in the Claim Statement. Except raising a plea in the Claim Statement that a notice was sent through his counsel to the Respondent/Management and a reply has been received for the same from the counsel for the Respondent/Management, no evidence either oral or documentary has been let in, in support of that version. Apart from that there is absolutely no oral or documentary evidence on the side of the Petitioner/Workman to prove his alleged continuous service directly under the Respondent/Management. As per the contention of the Respondent/ Management, no evidence worth considering has been let in by the Petitioner to show that there was employer-employee relationship existed between the Respondent/Management and the Petitioner/ Workman. In the Claim Statement also, the Petitioner has not given any particulars about the days he worked under Respondent/Management in respect of the work relating to both passenger and cargo transport and on other capacities as a workman. He has simply stated in his Claim Statement that he has been employed continuously without any break for more than 480 days within a period of 24 calendar months. For his averment in the Claim Statement that he attended the work mentioned in the Claim Statement and that he worked continuously without any break for more than 480 days within a period of 24 calendar months, he has not produced any substantial evidence. It is the specific contention of the Respondent in the Counter Statement that the persons like the Petitioner were engaged by the Respondent, Singapore Airlines Ltd. as Casual Labourers purely on temporary basis for clearance of baggage as and when occasion arises and that the Respondent/Management used to engage Casual Labourers on daily wage basis at the time of heavy arrivals and departures of flights and such employment they used to make on temporary basis and they never used to engage them continuously for a period of 240 days in 12 calendar months. So from these contentions of either parties, it can be said that the allegation of the Petitioner that he had worked for more than 480 days continuously within a period of 24 calendar months is not correct. When the Petitioner has raised this claim to avail the relief prayed for in the claim petition from the Respondent/ Management, he has to prove his plea in the Claim Statement with acceptable legal evidence that he had been employed continuously without any break for more than 480 days within a period of 24 calendar months. Thus, the Petitioner/Workman has not discharged his burden, though the onus is on him to prove that he had worked 480 days continuously in a period of 24 calendar months. The Respondent in their Counter Statement has stated that the Respondent/Management emphatically denies that the Petitioner has completed 240 days of continuous service in a period of 12 calendar months. The learned counsel for the Respondent had also argued that the Petitioner has failed to prove with acceptable legal evidence that he had worked for 240 days in a period of 12 calendar months/480 days continuously for a period of 24 calendar months. Hence, he cannot ask for the relief of reinstatement into service as that of a permanent workman. He had also relied upon a decision of Supreme Court reported as 2002 FACTORIES JOURNAL REPORT Vol. 100 pg. 397 between RANGE FOREST OFFICER and S.T.HADIMANI. In that case the Supreme Court has held that "*since the claim of the workman that he had worked for 240 days was denied by the Management, it is for the workman to lead evidence to show that he had in fact, worked for 240 days and that in the absence of proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for that period, it cannot be concluded that the workman had in fact, worked for 240 days and the onus is on the workman to prove the claim with sufficient records and mere an affidavit is not sufficient.*" The decision of the Supreme Court in this case is quite applicable to the present case also. It is further argued by the learned counsel for the Respondent that the averment in the Counter Statement of the Respondent to that effect that the Respondent/Management had entered into ground handling agreement with Air India and in pursuance of the same, Air India has taken care of the ground handling work, which the Petitioner was said to have attended the work relating to both passenger and cargo transport, and the same has not been denied by the Petitioner. Though the period of work alleged by the Petitioner in his Claim Statement has been emphatically denied in the Counter Statement of the Respondent/Management, the Petitioner has not chosen to prove his alleged period of service with acceptable legal oral or documentary evidence. It is further argued by the learned counsel for the Respondent that the people like the Petitioner/Workman have been enagaged as a casual employees at the time of exigencies to meet the requirement or personnel for handling baggage for aircrafts during the period of over crowding of passengers or arrival of baggage and the personnel provided by Air India for that work failed to report in time or remains absent. This has not been disputed by the Petitioner as incorrect or false. The learned counsel would further contend that such casual employment would amount to only implied contractual agreement, which squarely comes under section 2(oo)(bb) of Industrial Disputes Act, 1947 which is an exception to retrenchment and hence there was no retrenchment in the case of the

Petitioner's non-employment and he cannot claim any relief from the Respondent/Management under the Industrial Disputes Act, 1947 and that he cannot claim retrenchment compensation or re-employment. He would further argue that mere pleadings of the Petitioner in his Claim Statement that he was employed under the Respondent/Management for a particular period is not suffice and as per the decision of Madras High Court in a case reported as 2001 4 LLN 903 the Petitioner has to prove the pleadings by letting sufficient evidence. In the above cited case, the Hon'ble High Court of Madras has held that "the allegation which was not pleaded and even if evidence is adduced in that regard cannot be examined because the other side had no notice of it and if such evidence is entertained it would tantamount to granting unfair advantage to the party who had not pleaded his case properly". So from this, it is seen that argument advanced by the learned counsel for the Respondent/Management can be accepted as correct as there is no evidence to show in this case, on the side of the Petitioner, that he has been employed under the Respondent/Management Singapore Airlines and was in continuous employment for more than 480 days in a period of 24 calendar months. So, from all these things, it is seen that the Petitioner cannot ask for reinstatement in service. From the available evidence, it is seen that the Petitioner was engaged only as a casual workman by the Respondent/Management as and when occasion arises. So by the very nature of the employment of the Petitioner, he has no assurance that he would be employed by the Respondent/ Management for any specified duration. The persons like Petitioner temporary employment could not be for any period for which they can look forward to assured work from the employer. It is held by the High Court of Madras in a case reported as 2001 3 LLN 807 between L & T McNEIL LTD. MADRAS and PRESIDING OFFICER, MADRAS LABOUR COURT AND ANOTHER that "casual workmen have only to report each day and hope that employment would be provided to them on that day. Their not going to the place of employer will not result in any penalty as they are not assured of work daily. This kind of employment, therefore, cannot be treated on par with the temporary and permanent employment. The employers are not bound to provide work to casual workmen unless they choose to and there is work for the day. Directing reinstatement of casual workman who had worked as such, for a relatively short period of time, would only mean that their names would once again be included in the list of casual workmen putting them in the same position they were earlier, where they would only report for the employment with the hope being providing with the work and no more." This observation of the High Court of Madras in the above cited case is applicable to the facts of this case also.

6. The learned counsel for the Respondent/ Management had argued that the Petitioner has not at all pleaded in the Claim Statement that prior to the termination he had worked for 240 days continuously but it is his plea that he had worked 480 days in 24 calendar months and the same also has not been proved and that the Petitioner is not entitled for any permanent employment. Since he was engaged only as a casual worker as and when required due to the exigencies, the question of termination does not arise and hence they are not entitled to the relief of reinstatement also as a permanent employee of the Respondent/Management.

7. On the basis of the available materials in this case, the argument advanced by the learned counsel for the Respondent/Management can be accepted as correct. Under such circumstances, it can be concluded that there is no question of termination of the service of the Petitioner by the Respondent/ Management and the non-employment of the Petitioner does not amount to any retrenchment. Hence, it can be concluded that the non-employment of the Petitioner/Workman Sri C. Kumar by the Respondent/Management, Singapore Airlines Ltd., Chennai is justified and hence the concerned workman is not entitled to any relief. Thus, the point is answered accordingly.

8. In the result, an Award is passed holding that the I Party/Workman Sri C. Kumar is not entitled for any relief. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 20th November, 2002.)

K. KARTHIKEYAN, Presiding Officer.

Witness Examined :—

On either side : None

Exhibits marked:—

On either side : Nil

नई दिल्ली, 11 दिसम्बर, 2002

का.आ. 36.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंगापुर एअर-लांइस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पंचाट (संदर्भ संख्या 683/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09-12-2002 को प्राप्त हुआ था।

[सं० एल-11012/10/99-आई. आर.(सी. 1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 11th December, 2002

S.O. 36.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the award (Ref. No. 683/2001) of the Central Government Industrial Tribunal, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Singapor Airlines Ltd. and their workman, which was received by the Central Government on 09-12-2002.

[No. L-11012/10/99-IR (C-1)]

S.S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 20th November, 2002

PRESENT :

K. KARTHIKEYAN : Presiding Officer

INDUSTRIAL DISPUTE NO. 683/2001
(Tamil Nadu Principal Labour Court CGID. No. 321/99)

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Workman Sri B. Anantharaman and the Managing Director Singapore Airlines Ltd., Chennai.)

BETWEEN

Sri B. Anantharaman	: I Party/workman
AND	
The Managing Director, Singapore Airlines Ltd., Chennai.	: II Party/Management

Appearance :

For the Workman	: M/s. V. Prakash & P. Ramkumar & A. Lakshmi, Advocates.
For the Management	: M/s. King & Partridge, Advocate

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned dispute for adjudication vide Order No. L-11012/10/99/IR (CM-I) dated 18-05-1999.

This reference has been made earlier to the Tamil Nadu Principal Labour Court, Chennai, where it was taken on file as CGID. No. 321/99. when the matter was pending enquiry in that Labour Court, as per the orders of the Central Government, Ministry of Labour this case has also been transferred from the file of Tamil Nadu Principal Labour Court to this Tribunal for adjudication. On receipt of records from that Principal Labour Court, this case has been taken on file as I.D. No. 683/2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 16-10-2001 with their respective parties and to prosecute this case further. Accordingly, the learned counsel on either side along with their respective parties have appeared and prosecuted this case. The Claim Statement of the I Party/Workman and the Counter Statement of the II Party/Management were filed, when this matter was pending before the Tamil Nadu Principal Labour Court itself.

Upon perusing the Claim Statement, Counter Statement, the other material papers on record, after hearing the arguments advanced by the learned counsel for the II Party/Management and this matter having stood over till this date for consideration, this Tribunal has passed the following :—

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt. for adjudication by this Tribunal is as follows :—

"Whether the action of the management of M/s. Singapore Airlines Ltd., Chennai, in terminating the service of the workman Sri B. Anantharaman from 05.05.98 is justified or not? If not justified, to what relief the workman is entitled?"

2. The averments in the Claim Statement filed by the I Party/Workman Sri B. Anantharaman (hereinafter refers to as Petitioner) are briefly as follows:—

The Petitioner has been working in the Madras Airport employed by M/s. Singapore Airlines Ltd. II Party/Management (hereinafter refers to as Respondent) for doing the work relating to both passenger and cargo transport. He does the work of wheel chair assistance for handicapped passengers, assistance in the ticket checking counter for taking the baggage, putting the baggage tag on and putting them on conveyor belt and ensuring proper movement of these articles on the conveyor belt and thereafter removing the same from the Conveyor belt and doing the baggage make up i.e. ensuring proper loading of these baggage into the containers. He has also done the ground duties i.e. ramp work, high loading and bulk loading and when the flight lands, he does the break up of the baggage and ensuring that they are loaded into the containers for the same to be picked up by disembarking passengers. He has also done the special handling work in respect of first class and business class passengers. With regard to cargo flights he did loading and off loading and palletising. For the

aforesaid work, the Petitioner has been employed continuously without any break for more than 480 days within a period of 24 calendar months. He was employed continuously from 1993 till the date of his termination. On 2-5-98 a notice by the Petitioner and other similarly placed workmen was issued through a counsel to the II Party/ Management M/s. Singapore Airlines Ltd. seeking that the Petitioners may be made permanent and the management should not attempt to bring in a contractor in a relationship that was hitherto direct. Then, when the Petitioner along with similarly placed workmen reported for duty on 4-5-98, Mr. Lim Thorn Cheng the Station Manager and Mr. Srinivasan the Assistant Station Manager of the II Party/Management at Anna International Airport, Chennai, called the workmen into the Station Manager's cabin locked the door and scolded the workmen for having gone to the lawyer and thereafter took away the temporary passes issued to them by the Bureau of Civil Aviation Authority, Chennai. Thereafter, they were asked to go out. This was done after they had completed their work for the departure of the Singapore Airlines flight. They were kept inside the Manager's cabin from 00.00 hours to 02.00 hours on the night of 4th/5th May, 1998. The workers were during that time asked either to sign on the contract agreeing to work under the contractor or failing which it was said that their services stood terminated. Significantly, Mr. Rosaiah, S/o Mr. Devaiyah employed by the II Party/Management from 1993 who was not one of the workmen involved in the notice was given back his temporary pass issued by the Bureau of Civil Aviation Security, Chennai. The Petitioner and Mr. Somu did not attend the work on 4-5-98 and hence their passes were not taken. However, when the Petitioner reported for duty on the next day i.e. on 05-05-98 he was denied employment by the II Party/Management. Thus, the Petitioner and similarly placed workmen were terminated from service without any notice and solely with a view to victimise the Petitioner for claiming permanency and other labour welfare benefits to which he is entitled to under the various labour welfare legislations. Immediately thereafter on 5th May, 1998 a lawyers notice was issued to the Singapore Airlines and various other officials including Mr. Lim Thong Cheng and Mr. Srinivasan objecting to the Petitioner's termination and the termination of service of similarly placed workmen like the Petitioner in the circumstances done and seeking reinstatement with all consequential benefits including permanency and by mentioning that they have committed unfair labour practice. A reply was issued on behalf of the management through their counsel on 19-5-98. In that reply, the termination of the Petitioner and others from service had not been denied. Then the Petitioner raised an industrial dispute under Section 2A of the Act before the Assistant Labour Commissioner (Central), Chennai. The impugned termination of the Petitioner from service w.e.f. 5-5-98 is arbitrary, illegal, capricious and whimsical. The Petitioner has been victimised for trying to assert his rights conferred on him under various labour welfare legislations. The action of the Respondent in terminating the Petitioner amounts to retrenchment within the meaning of Section 2(oo) of Industrial Disputes Act, 1947. The Respondent has not complied with the conditions precedent mandated under Section 25F of the Act. The action of the Respondent in seeking to introduce contract labour system in a relationship which was hitherto direct amounts to changing the service conditions for which statutory notice under Section 9A had not been given. It is an offence as per the provisions of Industrial Disputes Act, 1947. The Respondent/Management is not justified in refusing to confer permanency on the Petitioner and similarly placed workmen even though they had been working continuously for a very long period of time. The action of the Respondent/ Management is in violation of Article 21 of Constitution of India. The last drawn wages of the Petitioner was Rs. 1050/- p.m. The permanent employees of the Respondent/Management in the last grade are being paid Rs. 14,000/- p. m. Hence is, therefore prayed that this Hon'ble Court may be pleased to pass an award directing the Respondent/Management to reinstate the Petitioner and regularise and absorb him in the services of the Respondent/ Management and pay him all past benefits as was paid to the permanent workman with all other consequent benefits including seniority, back wages etc.

3. The averments in the Counter Statement filed by the II Party/Management, Singapore Airlines Ltd. (hereinafter refers to as Respondent) are briefly as follows:–

A Ground Handling Agreement was entered into between M/s. Singapore Airlines and M/s. Air India in the year 1988, which was renewed from time to time. The Annexure B clause 4.2 of the agreement states that M/s. Air India, the handling company shall provide service personnel for handling baggage in the Respondent's aircrafts. Under above agreement, the Respondent is only referred to as the 'Carrier' and Air India as 'Handling Company'. Occasionally, when there are over crowding of passengers or arrival of baggage and if a personnel provided by Air India for handling baggage failed to report in time or absent, the Respondent will engage Casual Labourers purely on temporary basis for clearance of baggage, which will amount to an implied contractual engagement. Neither the Petitioner/Workman nor similarly placed persons claiming employment with the Respondent has been engaged on regular basis. The Respondent do not maintain any records relating to temporary/casual engagements, since such engagements arise occasionally. Such temporary engagement of Casual Labourers by the Respondent occasionally will not vest any right on the Petitioner/ Workman to claim benefits under Industrial Disputes Act, 1947 alleging contravention of Section 25F and 25N of the said Act. Temporary, contractual engagements of Casual Labourers if at all will only fall within the ambit of Section 2(oo) (bb) of the Industrial Disputes Act, 1947, which is an exception to retrenchment. Hence, the non-employment of

the Petitioner/Workman did not amount to retrenchment and he cannot claim any relief from the Respondent/ Management under Industrial Disputes Act, much less retrenchment compensation or re-employment. Inasmuch as, personnel for handling baggage for the aircrafts are provided by Air India, this Respondent/Management is not liable to give employment to the Petitioner. Neither the Petitioner nor similarly placed persons before the authority were engaged in any vacancy or post. There is no vacancy or post available with the Respondent to offer employment to the Petitioner/Workman. The claim of the Petitioner/ Workman is stale barred by laches and as such, the Petitioner is not entitled to seek benefits under Industrial Disputes Act from the Respondent. It is false to contend that the Petitioner joined the services of the Respondent/ Management for doing the work relating to both passenger and cargo transport. The Petitioner was engaged occasionally to handle over crowding of passengers or arrival of baggage. Therefore, it is incorrect to state that he was given duties as a loader to load the baggage in the aircraft and he was asked to work for baggage identification. M/s. Air India who is the handling company provides personnel for handling baggage of the Respondent aircrafts. There is no nexus of employer and employee relationship between the Petitioner and Respondent/Management. The Petitioner cannot maintain the industrial dispute in the absence of any positive proof of employer-employee relationship between him and the Respondent/Management and hence, it is liable to be dismissed in limini. It is denied that the Petitioner had completed 480 days of continuous service in a period of 24 calendar months from the year 1992. It was purely on a temporary basis, casual to meet the exigencies as mentioned earlier which will amount to an implied contract at the best. Hence, such engagement falls within the definition of Section 2(oo)(bb) of Industrial Disputes Act, 1947 and the question of issuance of notice and illegal termination does not arise much less retrenchment. The Petitioner has come forward with his petition alleging non-employment of the Respondent/ Management with an ulterior motive and malafide intention only to harass the Respondent for seeking monetary benefits. The alleged non-compliance of Section 25F and Section 25N of the Industrial Disputes Act, 1947 are all untenable and cannot be sustained. The Petitioner's counsel's notice dated 2-5-98 was suitably answered by the Respondent's counsel's reply dated 19-5-98. The allegations in the Claim Statement about the alleged occurrence on 4-5-98 in the Station Manager's cabin are denied as false. The notice dated 5-5-98 was suitably answered by the reply notice dated 5-6-98 issued through the counsel of the Respondent. The alleged termination of the services of the Petitioner and similarly placed persons does not amount to unfair labour practice. There is no illegal or malafide termination of service of the Petitioner, since he was employed only on a casual basis. The question of violation of Section 9A of the Industrial Disputes Act, 1947 does not arise in the facts and circumstances of the case. Since the Petitioner was engaged on casual basis as and when exigency arose, the question of paying monthly wages does not arise at all. The claims are all ill-founded, misconceived, untenable and consequently, the Petitioner is not entitled to any relief much less reinstatement in service, back wages, continuity of service attendant benefits. Hence, it is prayed that the claim of the Petitioner may be dismissed.

4. When the matter was taken up for enquiry on 17-09-2002, the counsel for the II Party/Management alone was present, neither the I Party nor his counsel on record present. No oral or documentary evidence was let in on either side. After it was reported by the learned counsel for the II Party/Management that they have no oral evidence, the evidence was closed and posted for arguments for the counsel on either side. After the case has been adjourned twice for advancing the arguments of learned counsel on either side and was taken finally on 10-10-2002, the counsel who appeared for the II Party/Management had advanced his arguments and as the counsel for the I Party was not present to advance his arguments, it was held as no arguments for I Party and it was reserved for orders.

5. The point for my consideration is —

"Whether the action of the management of M/s. Singapore Airlines Ltd., Chennai, in terminating the service of the workman Sri B.Anantharaman from 05-05-98 is justified or not? If not justified, to what relief the workman is entitled?"

Point :—

It is the case of the Petitioner that he joined the services of the Singapore Airlines Ltd. for doing the work relating to both passenger and cargo transport and he was illegally denied employment w.e.f. 05-05-98 and that he has been employed continuously for more than 480 days within a period of 24 calendar months and that he was not paid retrenchment compensation and he was not given any notice in writing or wages in lieu of notice and hence such termination is bad for non-compliance of Section 25F of Industrial Disputes Act. The Respondent/Management would contend that a ground handling agreement was entered into between the Respondent and the Air India in the year 1988 which was renewed from time to time and that M/s. Air India, the Handling Company shall provide service personnel for handling baggage in the Respondent's Aircraft and that occasionally when there are over crowding of passengers or arrival of baggage and if personnel provided by the Air India for handling baggage failed to report in time or absent, the Respondent will engage Casual Labourers purely on temporary basis for clearance of baggage which would amount to an implied contractual engagement and hence, the workman like Petitioner have never been engaged on a regular basis and such temporary engagement of Casual Labourers by the Respondent

occasionally will not vest any right on the Petitioner/ Workman to claim benefits under Industrial Disputes Act alleging contravention of Section 25F of Industrial Disputes Act. It is further alleged that the non-employment of the Petitioner/Workman did not amount to retrenchment and he cannot claim any relief from the management under the Industrial Disputes Act much less retrenchment compensation or re-employment. It is also alleged by the Respondent/Management that the temporary contractual agreement for Casual Labourers if at all will only fall within the ambit of Section 2(oo)(bb) of the Industrial Disputes Act, 1947 which is an exception to retrenchment. Hence the Petitioner cannot claim any relief from the Respondent/ Management much less retrenchment compensation or re-employment. In support of the contention of the Respondent/Management in their Counter Statement, a xerox copy of the ground handling agreement entered into between the Singapore Airlines and Air India has been filed into Court, after furnishing a copy of the same to other side. It is not disputed on the side of the Petitioner. The Petitioner has not chosen to let in oral or documentary evidence in support of his contention in the Claim Statement. Except raising a plea in the Claim Statement that a notice was sent through his counsel to the Respondent/ Management and a reply has been received for the same from the counsel for the Respondent/Management, no evidence either oral or documentary has been let in, in support of that version. Apart from that there is absolutely no oral or documentary evidence on the side of the Petitioner/Workman to prove his alleged continuous service directly under the Respondent/Management. As per the contention of the Respondent/Management, no evidence worth considering has been let in by the Petitioner to show that there was employer-employee relationship existed between the Respondent/Management and the Petitioner/ Workman. In the Claim Statement also, the Petitioner has not given any particulars about the days he worked under Respondent/Management in respect of the work relating to both passenger and cargo transport and on other capacities as a workman. He has simply stated in his Claim Statement that he has been employed continuously without any break for more than 480 days within a period of 24 calendar months. For his averment in the Claim Statement that he attended the work mentioned in the Claim Statement and that he worked continuously without any break for more than 480 days within a period of 24 calendar months, he has not produced any substantial evidence. It is the specific contention of the Respondent in the Counter Statement that the persons like the Petitioner were engaged by the Respondent, Singapore Airlines Ltd. as Casual Labourers purely on temporary basis for clearance of baggage as and when occasion arises and that the Respondent/Management used to engage Casual Labourers on daily wage basis at the time of heavy arrivals and departures of flights and such employment they used to make on temporary basis and they never used to engage them continuously for a period of 240 days in 12 calendar months. So from these contentions of either parties, it can be said that the allegation of the Petitioner that he had worked for more than 480 days continuously within a period of 24 calendar months is not correct. When the Petitioner has raised this claim to avail the relief prayed for in the claim petition from the Respondent/Management, he has to prove his plea in the Claim Statement with acceptable legal evidence that he had been employed continuously without any break for more than 480 days within a period of 24 calendar months. Thus, the Petitioner/Workman has not discharged his burden, though the onus is on him to prove that he had worked 480 days continuously in a period of 24 calendar months. The Respondent in their Counter Statement has stated that the Respondent/Management emphatically denies that the Petitioner has completed 240 days of continuous service in a period of 12 calendar months. The learned counsel for the Respondent had also argued that the Petitioner has failed to prove with acceptable legal evidence that he had worked for 240 days in a period of 12 calendar months/480 days continuously for a period of 24 calendar months. Hence, he cannot ask for the relief of reinstatement into service as that of a permanent workman. He had also relied upon a decision of Supreme Court reported as 2002 FACTORIES JOURNAL REPORT Vol. 100 pg. 397 between RANGE FOREST OFFICER and S.T. HADIMANI. In that case the Supreme Court has held that "since the claim of the workman that he had worked for 240 days was denied by the Management, it is for the workman to lead evidence to show that he had in fact, worked for 240 days and that in the absence of proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for that period, it cannot be concluded that the workman had in fact, worked for 240 days and the onus is on the workman to prove the claim with sufficient records and mere an affidavit is not sufficient." The decision of the Supreme Court in this case is quite applicable to the present case also. It is further argued by the learned counsel for the Respondent that the averment in the Counter Statement of the Respondent to that effect that the Respondent/Management had entered into ground handling agreement with Air India and in pursuance of the same. Air India has taken care of the ground handling work, which the Petitioner was said to have attended the work relating to both passenger and cargo transport, and the same has not been denied by the Petitioner. Though the period of work alleged by the Petitioner in his Claim Statement has been emphatically denied in the Counter Statement of the Respondent/ Management, the Petitioner has not chosen to prove his alleged period of service with acceptable legal oral or documentary evidence. It is further argued by the learned counsel for the Respondent "that the people like the Petitioner/Workman have been engaged as a casual employees at the time of exigencies to meet the requirement or personnel for handling baggage for aircrafts during the

period of over crowding of passengers or arrival of baggage and the personnel provided by Air India for that work failed to report in time or remains absent. This has not been disputed by the Petitioner as incorrect or false. The learned counsel would further contend that such casual employment would amount to only implied contractuat agreement, which squarely comes under section 2(oo)(bb) of Industrial Disputes Act, 1947 which is an exception to retrenchment and hence there was no retrenchment in the case of the Petitioner's non-employment and he cannot claim any relief from the Respondent/Management under the Industrial Disputes Act, 1947 and that he cannot claim retrenchment compensation or re-employment. He would further argue that mere pleadings of the Petitioner in his Claim Statement that he was employed under the Respondent/Management for a particular period is not suffice and as per the decision of Madras High Court in a case reported as 2001 4 LLN 903 the Petitioner has to prove the pleadings by letting sufficient evidence. In the above cited case, the Hon'ble High Court of Madras has held that "the allegation which was not pleaded and even if evidence is adduced in that regard cannot be examined because the other side had no notice of it and if such evidence is entertained it would tantamount to granting unfair advantage to the party who had not pleaded his case properly". So from this, it is seen that argument advanced by the learned counsel for the Respondent/Management can be accepted as correct as there is no evidence to show in this case, on the side of the Petitioner, that he has been employed under the Respondent/Management Singapore Airlines and was in continuous employment for more than 480 days in a period of 24 calendar months. So, from all these things, it is seen that the Petitioner cannot ask for reinstatement in service. From the available evidence, it is seen that the Petitioner was engaged only as a casual workman by the Respondent/Management as and when occasion arises. So by the very nature of the employment of the Petitioner, he has no assurance that he would be employed by the Respondent/Management for any specified duration. The persons like Petitioner temporary employment could not be for any period for which they can look forward to assured work from the employer. It is held by the High Court of Madras in a case reported as 2001 3 LLN 807 between L & T McNEIL LTD. MADRAS and PRESIDING OFFICER, MADRAS LABOUR COURT AND ANOTHER that "casual workmen have only to report each day and hope that employment would be provided to them on that day. Their not going to the place of employer will not result in any penalty as they are not assured of work daily. This kind of employment, therefore, cannot be treated on par with the temporary and permanent employment. The employers are not bound to provide work to casual workmen unless they choose to and there is work for the day. Directing reinstatement of casual workman who had worked as such, for a relatively short period of time, would only mean that their names would once again be included in the list of casual workmen putting them in the same position they were earlier, where they would only report for the employment with the hope being providing with the work and no more." This observation of the High Court of Madras in the above cited case is applicable to the facts of this case also.

6. The learned counsel for the Respondent/ Management had argued that the Petitioner has not at all pleaded in the Claim Statement that prior to the termination he had worked for 240 days continuously but it is his plea that he had worked 480 days in 24 calendar months and the same also has not been proved and that the Petitioner is not entitled for any permanent employment. Since he was engaged only as a casual worker as and when required due to the exigencies, the question of termination does not arise and hence they are not entitled to the relief of reinstatement also as a permanent employee of the Respondent/Management.

7. On the basis of the available materials in this case, the argument advanced by the learned counsel for the Respondent/Management can be accepted as correct. Under such circumstances, it can be concluded that there is no question of termination of the service of the Petitioner by the Respondent/Management and the non-employment of the Petitioner does not amount to any retrenchment. Hence, it can be concluded that the non-employment of the Petitioner/Workman Sri B. Anantharaman by the Respondent/Management, Singapore Airlines Ltd., Chennai is justified and hence the concerned workman is not entitled to any relief. Thus, the point is answered accordingly.

8. In the result, an Award is passed holding that the I Party/Workman Sri B. Anantharaman is not entitled for any relief. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 20th November, 2002.)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined :-

On either side : None

Exhibits marked:-

On either side : Nil

नई दिल्ली, 11 दिसम्बर, 2002

का.आ. 37.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंगापुर एअर लांइस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चैन्नई के पंचाट (संदर्भ संख्या 688/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09-12-2002 को प्राप्त हुआ था।

[सं० एल-11012/11/99-आई. आर.(विविध)]

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 11th December, 2002

S.O. 37.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the award (Ref. No.688/2001) of the Central Government Industrial Tribunal, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Singapor Air Lines Ltd. and their workman, which was received by the Central Government on 09-12-2002.

[No. L-11012/11/99-IR (C-1)]

S.S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 20th November, 2002

PRESENT:

K. KARTHIKEYAN : Presiding Officer

INDUSTRIAL DISPUTE NO. 688/2001
(Tamil Nadu Principal Labour Court CGID. No. 326/99)

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Workman Sri N.P. Laxminarayan and the Managing Director Singapore Airlines Ltd., Chennai.)

BETWEEN

Sri N.P. Lakshminarayanan	: I Party/Workman
AND	
The Managing Director, Singapore Airlines Ltd., Chennai.	: II Party/Management

Appearance:

For the Workman	: M/s. V. Prakash & P. Ramkumar & A. Lakshmi, Advocates.
For the Management	: M/s. King & Partridge, Advocate

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947), have referred the concerned dispute for adjudication vide Order No. L-11012/11/99/IR (CM-I) dated 18-05-1999.

This reference has been made earlier to the Tamil Nadu Principal Labour Court, Chennai, where it was taken on file as CGID. No. 326/99. When the matter was pending enquiry in that Labour Court, as per the orders of the Central Government, Ministry of Labour this case has also been transferred from the file of Tamil Nadu Principal Labour Court to this Tribunal for adjudication. On receipt of records from that Principal Labour Court, this case has been taken on file as I.D. No. 688/2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 17-10-2001 with their respective parties and to prosecute this case further. Accordingly, the learned counsel on either side along with their respective parties have appeared and prosecuted this case. The Claim Statement of the I Party/Workman and the Counter Statement of the II Party/Management were filed, when this matter was pending before the Tamil Nadu Principal Labour Court itself.

Upon perusing the Claim Statement, Counter Statement, the other material papers on record, after hearing the arguments advanced by the learned counsel for the II Party/Management and this matter having stood over till this date for consideration, this Tribunal has passed the following: -

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt. for adjudication by this Tribunal is as follows: -

> "Whether the action of the management of M/s. Singapore Airlines Ltd., Chennai, in terminating the service of Sri N.P. Lakshminarayanan from 05-05-98 is justified or not? If not, justified, to what relief the workman is entitled?"

2. The averments in the Claim Statement filed by the I Party/Workman Sri N.P. Lakshminarayanan (hereinafter refers to as Petitioner) are briefly as follows :—

The Petitioner has been working in the Madras Airport employed by M/s. Singapore Airlines Ltd. II Party/ Management (hereinafter refers to as Respondent) for doing the work relating to both passenger and cargo transport. He does the work of wheel chair assistance for handicapped passengers, assistance in the ticket checking counter for taking the baggage, putting the baggage tag on and putting them on conveyor belt and ensuring proper movement of these articles on the conveyor belt and thereafter removing the same from the Conveyor belt and doing the baggage make up i.e. ensuring proper loading of these baggage into the containers. He has also done the ground duties i.e. ramp work, high loading and bulk loading and when the flight lands, he does the break up of the baggage and ensuring that they are loaded into the containers for the same to be picked up by disembarking passengers. He has also done the special handling work in respect of first class

and business class passengers. With regard to cargo flights he did loading and off loading and palletising. For the aforesaid work, the Petitioner has been employed continuously without any break for more than 480 days within a period of 24 calendar months. He was employed continuously from the year 1991 till the date of his termination. On 2-5-98 a notice by the Petitioner and other similarly placed workmen was issued through a counsel to the II Party/Management M/s. Singapore Airlines Ltd. seeking that the Petitioners may be made permanent and the management should not attempt to bring in a contractor in a relationship that was hitherto direct. Then, when the Petitioner along with similarly placed workmen reported for duty on 4-5-98, Mr. Lim Thorn Cheng the Station Manager and Mr. Srinivasan the Assistant Station Manager of the II Party/Management at Anna International Airport, Chennai, called the workmen into the Station Manager's cabin locked the door and scolded the workmen for having gone to the lawyer and thereafter took away the temporary passes issued to them by the Bureau of Civil Aviation Authority, Chennai. Thereafter, they were asked to go out. This was done after they had completed their work for the departure of the Singapore Airlines flight. They were kept inside the Manager's cabin from 00.00 hours to 02.00 hours on the night of 4th/5th May, 1998. The workers were during that time asked either to sign on the contract agreeing to work under the contractor or failing which it was said that their services stood terminated. Significantly, Mr. Rosaiah, S/o. Mr. Devaiyah employed by the II Party/Management from 1993 who was not one of the workmen involved in the notice was given back his temporary pass issued by the Bureau of Civil Aviation Security, Chennai. Mr. Somu and Mr. Anantharaman did not attend the work on 4-5-98 and hence their passes were not taken. However, when the Petitioner reported for duty on the next day i.e. on 05-05-98 he was denied employment by the II Party/Management. Thus, the Petitioner and similarly placed workmen were terminated from service without any notice and solely with a view to victimise the Petitioner for claiming permanency and other labour welfare benefits to which he is entitled to under the various labour welfare legislations. Immediately thereafter on 5th May, 1998, a lawyer's notice was issued to the Singapore Airlines and various other officials including Mr. Lim Thong Cheng and Mr. Srinivasan objecting to the Petitioner's termination and the termination of service of similarly placed workmen like the Petitioner in the circumstances done and seeking reinstatement with all consequential benefits including permanency and by mentioning that they have committed unfair labour practice. A reply was issued on behalf of the management through their counsel on 19-5-98. In that reply, the termination of the Petitioner and others from service had not been denied. Then the Petitioner raised an industrial dispute under section 2A of the Act before the Assistant Labour Commissioner (Central), Chennai. The impugned termination of the Petitioner from service w.e.f. 5-5-98 is arbitrary, illegal, capricious and whimsical. The Petitioner has been victimised for trying to assert his rights conferred on him under various labour welfare legislations. The action of the Respondent in terminating the Petitioner amounts to retrenchment within the meaning of Section 2(oo) of Industrial Disputes Act, 1947. The Respondent has not complied with the conditions precedent mandated under section 25F of the Act. The action of the Respondent in seeking to introduce contract labour system in a relationship which was hitherto direct amounts to changing the service conditions for which statutory notice under section 9A had not been given. It is an offence as per the provisions of Industrial Disputes Act, 1947. The Respondent/Management is not justified in refusing to confer permanency on the Petitioner and similarly placed workmen even though they had been working continuously for a very long period of time. The action of the Respondent/Management is in violation of Article 21 of Constitution of India. The last drawn wages of the Petitioner was Rs.1,050 p.m. The permanent employees of the Respondent/Management in the last grade are being paid Rs. 14,000 p.m. Hence is, therefore prayed that this Hon'ble court may be pleased to pass an award directing the Respondent/Management to reinstate the Petitioner and regularise and absorb him in the services of the Respondent/Management and pay him all past benefits as was paid to the permanent workman with all other consequent benefits including seniority, back wages etc.

3. The averments in the Counter Statement filed by the II Party/Management, Singapore Airlines Ltd. (hereinafter refers to as Respondent) are briefly as follows :—

A Ground Handling Agreement was entered into between M/s. Singapore Airlines and M/s. Air India in the year 1988, which was renewed from time to time. The Annexure B clause 4.2 of the agreement states that M/s. Air India, the handling company shall provide service personnel for handling baggage in the Respondent's aircrafts. Under above agreement, the Respondent is only referred to as the 'Carrier' and Air India as 'Handling Company'. Occasionally, when there are over crowding of passengers or arrival of baggage and if a personnel provided by Air India for handling baggage failed to report in time or absent, the Respondent will engage Casual Labourers purely on temporary basis for clearance of baggage, which will amount to an implied contractual engagement. Neither the Petitioner/Workman nor similarly placed persons claiming employment with the Respondent has been engaged on regular basis. The Respondent do not maintain any records relating to temporary/casual engagements, since such engagements arise occasionally. Such temporary engagement of Casual Labourers by the Respondent occasionally will not vest any right on the Petitioner/Workman to claim benefits under Industrial Disputes Act, 1947 alleging contravention of Sections 25F and 25N of the said Act. Temporary, contractual engagements of

Casual Labourers if at all will only fall within the ambit of Section 2(oo) (bb) of the Industrial Disputes Act, 1947, which is an exception to retrenchment. Hence, the non-employment of the Petitioner/Workman did not amount to retrenchment and he cannot claim any relief from the Respondent/Management under Industrial Disputes Act, much less retrenchment compensation or re-employment. Inasmuch as, personnel for handling baggage for the aircrafts are provided by Air India, this Respondent/ Management is not liable to give employment to the Petitioner. Neither the Petitioner nor similarly placed persons before the authority were engaged in any vacancy or post. There is no vacancy or post available with the Respondent to offer employment to the Petitioner/Workman. The claim of the Petitioner/Workman is stale barred by laches and as such, the Petitioner is not entitled to seek benefits under Industrial Disputes Act from the Respondent. It is false to contend that the Petitioner joined the services of the Respondent/Management for doing the work relating to both passenger and cargo transport. The Petitioner was engaged occasionally to handle over crowding of passengers on arrival of baggage. Therefore, it is incorrect to state that he was given duties as a loader to load the baggage in the aircraft and he was asked to work for baggage identification. M/s. Air India who is the handling company provides personnel for handling baggage of the Respondent aircrafts. There is no nexus of employer and employee relationship between the Petitioner and Respondent/Management. The Petitioner cannot maintain the industrial dispute in the absence of any positive proof of employer-employee relationship between him and the Respondent/Management and hence, it is liable to be dismissed in limini. It is denied that the Petitioner had completed 480 days of continuous service in a period of 24 calendar months from the year 1992. It was purely on a temporary basis, casual to meet the exigencies as mentioned earlier which will amount to an implied contract at the best. Hence, such engagement falls within the definition of Section 2(oo)(bb) of Industrial Disputes Act, 1947 and the question of issuance of notice and illegal termination does not arise much less retrenchment. The Petitioner has come forward with his petition alleging non-employment of the Respondent/Management with an ulterior motive and malafide intention only to harass the Respondent for seeking monetary benefits. The alleged non-compliance of Section 25F and Section 25N of the Industrial Disputes Act, 1947 are all untenable and cannot be sustained. The Petitioner's counsel's notice dated 2-5-98 was suitably answered by the Respondent's counsel's reply dated 19-5-98. The allegations in the Claim Statement about the alleged occurrence on 4-5-98 in the Station Manager's cabin are denied as false. The notice dated 5-5-98 was suitably answered by the reply notice dated 5-6-98 issued through the counsel of the Respondent. The alleged termination of the services of the Petitioner and similarly placed persons does not amount to unfair labour practice. There is no illegal or malafide termination of service of the Petitioner, since he was employed only on a casual basis. The question of violation of Section 9A of the Industrial Disputes Act, 1947 does not arise in the facts and circumstances of the case. Since the Petitioner was engaged on casual basis as and when exigency arose, the question of paying monthly wages does not arise at all. The claims are all ill-founded, misconceived, untenable and consequently, the Petitioner is not entitled to any relief much less reinstatement-in service, back wages, continuity of service attendant benefits. Hence, it is prayed that the claim of the Petitioner may be dismissed.

4. When the matter was taken up for enquiry on 17-09-2002, the counsel for the II Party/Management alone was present, neither the I Party nor his counsel on record present. No oral or documentary evidence was let in on either side. After it was reported by the learned counsel for the II Party/Management that they have no oral evidence, the evidence was closed and posted for arguments for the counsel on either side. After the case has been adjourned twice for advancing the arguments of learned counsel on either side and was taken finally on 10-10-2002, the counsel who appeared for the II Party/ Management had advanced his arguments and as the counsel for the I Party was not present to advance his arguments, it was held as no arguments for I Party and it was reserved for orders.

5. The point for my consideration is—

"Whether the action of the management of M/s. Singapore Airlines Ltd., Chennai, in terminating the service of Sri N.P.Lakshminarayanan from 05-05-98 is justified or not? If not, justified, to what relief the workman is entitled?"

Point :—

It is the case of the Petitioner that he joined the services of the Singapore Airlines Ltd. for doing the work relating to both passenger and cargo transport and he was illegally denied employment w.e.f. 05.05.98 and that he has been employed continuously for more than 480 days within a period of 24 calendar months and that he was not paid retrenchment compensation and he was not given any notice in writing or wages in lieu of notice and hence such termination is bad for non-compliance of Section 25F of Industrial Disputes Act. The Respondent/Management would contend that a ground handling agreement was entered into between the Respondent and the Air-India in the year 1988 which was renewed from time to time and that M/s. Air India, the Handling Company shall provide service personnel for handling baggage in the Respondent's Aircraft and that occasionally when there are over crowding of passengers or arrival of baggage and if personnel provided by the Air India for handling baggage failed to report in time or absent, the Respondent will engage Casual Labourers purely on temporary basis for clearance of

baggage which would amount to an implied contractual engagement and hence, the workman like Petitioner have never been engaged on a regular basis and such temporary engagement of Casual Labourers by the Respondent occasionally will not vest any right on the Petitioner Workman to claim benefits under Industrial Disputes Act alleging contravention of Section 25F of Industrial Disputes Act. It is further alleged that the non-employment of the Petitioner/Workman did not amount to retrenchment and he cannot claim any relief from the management under the Industrial Disputes Act much less retrenchment compensation or re-employment. It is also alleged by the Respondent/Management that the temporary contractual agreement for Casual Labourers if at all will only fall within the ambit of Section 2 (oo) (bb) of the Industrial Disputes Act, 1947 which is an exception to retrenchment. Hence the Petitioner cannot claim any relief from the Respondent/ Management much less retrenchment compensation or re-employment. In support of the contention of the Respondent/Management in their Counter Statement, a xerox copy of the ground handling agreement entered into between the Singapore Airlines and Air India has been filed into Court, after furnishing a copy of the same to other side. It is not disputed on the side of the Petitioner. The Petitioner has not chosen to let in oral or documentary evidence in support of his contention in the Claim Statement. Except raising a plea in the Claim Statement that a notice was sent through his counsel to the Respondent/ Management and a reply has been received for the same from the counsel for the Respondent/Management, no evidence either oral or documentary has been let in, in support of that version. Apart from that there is absolutely no oral or documentary evidence on the side of the Petitioner/Workman to prove his alleged continuous service directly under the Respondent/Management. As per the contention of the Respondent/Management, no evidence worth considering has been let in by the Petitioner to show that there was " employer-employee relationship existed between the Respondent/Management and the Petitioner/Workman. In the Claim Statement also, the Petitioner has not given any particulars about the days he worked under Respondent/Management in respect of the work relating to both passenger and cargo transport and on other capacities as a workman. He has simply stated in his Claim Statement that he has been employed continuously without any break for more than 480 days within a period of 24 calendar months. For his averment in the Claim Statement that he attended the work mentioned in the Claim Statement and that he worked continuously without any break for more than 480 days within a period of 24 calendar months, he has not produced any substantial evidence . It is the specific contention of the Respondent in the Counter Statement that the persons like the Petitioner were engaged by the Respondent, Singapore Airlines Ltd. as Casual Labourers purely on temporary basis for clearance of baggage as and when occasion arises and that the Respondent/Management used to engage Casual Labourers on daily wage basis at the time of heavy arrivals and departures of flights and such employment they used to make on temporary basis and they never used to engage them continuously for a period of 240 days in 12 calendar months. So from these contentions of either parties, it can be said that the allegation of the Petitioner that he had worked for more than 480 days continuously within a period of 24 calendar months is not correct. When the Petitioner has raised this claim to avail the relief prayed for in the claim petition from the Respondent/Management, he has to prove his plea in the Claim Statement with acceptable legal evidence that he had been employed continuously without any break for more than 480 days within a period of 24 calendar months. Thus, the Petitioner/Workman has not discharged his burden, though the onus is on him to prove that he had worked 480 days continuously in a period of 24 calendar months. The Respondent in their Counter Statement has stated that the Respondent/Management emphatically denies that the Petitioner has completed 240 days of continuous service in a period of 12 calendar months. The learned counsel for the Respondent had also argued that the Petitioner has failed to prove with acceptable legal evidence that he had worked for 240 days in a period of 12 calendar months/480 days continuously for a period of 24 calendar months. Hence, he cannot ask for the relief of reinstatement into service as that of a permanent workman. He had also relied upon a decision of Supreme Court reported as 2002 FACTORIES JOURNAL REPORT Vol. 100 pg. 397 between RANGE FOREST OFFICER and S.T.HADIMANI. In that case the Supreme Court has held that *"since the claim of the workman that he had worked for 240 days was denied by the Management, it is for the workman to lead evidence to show that he had in fact, worked for 240 days and that in the absence of proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for that period, it cannot be concluded that the workman had in fact, worked for 240 days and the onus is on the workman to prove the claim with sufficient records and mere an affidavit is not sufficient."* The decision of the Supreme Court in this case is quite applicable to the present case also. It is further argued by the learned counsel for the Respondent that the averment in the Counter Statement of the Respondent to that effect that the Respondent/Management had entered into ground handling agreement with Air India and in pursuance of the same, Air India has taken care of the ground handling work, which the Petitioner was said to have attended the work relating to both passenger and cargo transport, and the same has not been denied by the Petitioner. Though the period of work alleged by the Petitioner in his Claim Statement has been emphatically denied in the Counter Statement of the Respondent/ Management, the Petitioner has not chosen to prove his alleged period of service with acceptable legal oral or documentary evidence. It is further argued by the learned

counsel for the Respondent ' that the people like the Petitioner/Workman have been engaged as a casual employees at the time of exigencies to meet the requirement or personnel for handling baggage for aircrafts during the period of over crowding of passengers or arrival of baggage and the personnel provided by Air India for that work failed to report in time or remains absent. This has not been disputed by the Petitioner as incorrect or false. The learned counsel would further contend that such casual employment would amount to only implied contractual agreement, which squarely comes under section 2(oo)(bb) of Industrial Disputes Act, 1947 which is an exception to retrenchment and hence there was no retrenchment in the case of the Petitioner's non-employment and he cannot claim any relief from the Respondent/Management under the Industrial Disputes Act, 1947 and that he cannot claim retrenchment compensation or re-employment. He would further argue that mere pleadings of the Petitioner in his Claim Statement that he was employed under the Respondent/Management for a particular period is not suffice and as per the decision of Madras High Court in a case reported as 2001 4 LLN 903 the Petitioner has to prove the pleadings by letting sufficient evidence. In the above cited case, the Hon'ble High Court of Madras has held that "the allegation which was not pleaded and even if evidence is adduced in that regard cannot be examined because the other side had no notice of it and if such evidence is entertained it would tantamount to granting unfair advantage to the party who had not pleaded his case properly". So from this, it is seen that argument advanced by the learned counsel for the Respondent/Management can be accepted as correct as there is no evidence to show in this case, on the side of the Petitioner, that he has been employed under the Respondent/Management Singapore Airlines and was in continuous employment for more than 480 days in a period of 24 calendar months. So, from all these things, it is seen that the Petitioner cannot ask for reinstatement in service. From the available evidence, it is seen that the Petitioner was engaged only as a casual workman by the Respondent/Management as and when occasion arises. So by the very nature of the employment of the Petitioner, he has no assurance that he would be employed by the Respondent/Management for any specified duration. The persons like Petitioner temporary employment could not be for any period for which they can look forward to assured work from the employer. It is held by the High Court of Madras in a case reported as 2001 3 LLN 807 between L & T McNEIL LTD. MADRAS and PRESIDING OFFICER, MADRAS LABOUR COURT AND ANOTHER that *"casual workmen have only to report each day and hope that employment would be provided to them on that day. Their not going to the place of employer will not result in any penalty as they are not assured of work daily. This kind of employment, therefore, cannot be treated on par with the temporary and permanent employment. The employers are not bound to provide work to casual workmen unless they choose to and there is work for the day. Directing reinstatement of casual workman who had worked as such, for a relatively short period of time, would only mean that their names would once again be included in the list of casual workmen putting them in the same position they were earlier, where they would only report for the employment with the hope being providing with the work and no more."* This observation of the High Court of Madras in the above cited case is applicable to the facts of this case also.

6. The learned counsel for the Respondent/ Management had argued that the Petitioner has not at all pleaded in the Claim Statement that prior to the termination he had worked for 240 days continuously but it is his plea that he had worked 480 days in 24 calendar months and the same also has not been proved and that the Petitioner is not entitled for any permanent employment. Since he was engaged only as a casual worker as and when required due to the exigencies, the question of termination does not arise and hence they are not entitled to the relief of reinstatement also as a permanent employee of the Respondent/Management.

7. On the basis of the available materials in this case, the argument advanced by the learned counsel for the Respondent/Management can be accepted as correct. Under such circumstances, it can be concluded that there is no question of termination of the service of the Petitioner by the Respondent/Management and the non-employment of the Petitioner does not amount to any retrenchment. Hence, it can be concluded that the non-employment of the Petitioner/Workman Sri N.P. Lakshmi Narayanan by the Respondent/Management, Singapore Airlines Ltd., Chennai, is justified and hence the concerned workman is not entitled to any relief. Thus, the point is answered accordingly.

8. In the result, an Award is passed holding that the I Party/Workman Sri N.P. Lakshmi Narayanan is not entitled for any relief. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 20th November, 2002.)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined :—

On either side : None

Exhibits marked :—

On either side : Nil

नई दिल्ली, 11 दिसम्बर, 2002

का.आ. 38.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंगापुर एयर

लांइस लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चैन्नई के पंचाट (संदर्भ संख्या 682/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09-12-2002 को प्राप्त हुआ था।

[सं० एल-11012/12/99-आई. आर.(सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 11th December, 2002

S.O. 38.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the award (Ref. No. 682/2001) of the Central Government Industrial Tribunal, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Singapore Air Lines Ltd. and their workman, which was received by the Central Government on 09-12-2002.

[No. L-11012/12/99-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 20th November, 2002

Present: K. KARTHIKEYAN, Presiding Officer

INDUSTRIAL DISPUTE NO. 682/2001

(Tamil Nadu Principal Labour Court CGID.No. 320/99)

(In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Workman Sri P. Somu and the Managing Director, Singapore Airlines Ltd., Chennai.)

BETWEEN

Sri P. Somu : I Party/Workman

AND

The Managing Director, Singapore Airlines Ltd. Chennai. : II Party/ Management

APPEARANCE:

For the Workman : M/s. V. Prakash & P. Ramkumar & A. Lakshmi, Advocates

For the Management: M/s. King & Partridge, Advocate

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2 (A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947), have referred the concerned dispute for adjudication vide Order No.L-11012/12/99/IR (CM-I) dated 18-05-1999.

This reference has been made earlier to the Tamil Nadu Principal Labour Court, Chennai, where it was taken on file as CGID. No. 320/99. When the matter was pending enquiry in that Labour Court, as per the orders of the Central Government, Ministry of Labour this case has also been transferred from the file of Tamil Nadu Principal Labour Court to this Tribunal for adjudication. On receipt of records from that Principal Labour Court, this case has been taken on file as I.D. No. 682/2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 16-10-2001 with their respective parties and to prosecute this case further. Accordingly, the learned counsel on either side along with their respective parties have appeared and prosecuted this case. The Claim Statement of the I Party/Workman and the Counter Statement of the II Party/Management were filed, when, this matter was pending before the Tamil Nadu Principal Labour Court itself.

Upon perusing the Claim Statement, Counter Statement, the other material papers on record, after hearing the arguments advanced by the learned counsel for the II Party/Management and this matter having stood over till this date for consideration, this Tribunal has passed the following :—

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt. for adjudication by this Tribunal is as follows : —

> "Whether the action of the management of M/s. Singapore Airlines Ltd., Chennai, in terminating the service of the workman Sri P. Somu from 05-05-98 is justified or not? If not justified, to what relief the workman is entitled?"

2. The averments in the Claim Statement filed by the I Party/Workman Sri P. Somu (hereinafter refers to as Petitioner) are briefly as follows :—

The Petitioner has been working in the Madras Airport employed by M/s. Singapore Airlines Ltd. II Party/ Management (hereinafter refers to as Respondent) for doing the work relating to both passenger and cargo transport. He does the work of wheel chair assistance for handicapped passengers, assistance in the ticket checking counter for taking the baggage, putting the baggage tag on and putting them on conveyor belt and ensuring proper movement of these articles on the conveyor belt and thereafter removing the same from the Conveyor belt and doing the baggage make up i.e. ensuring proper loading of these baggage into the containers. He has also done the ground duties i.e. ramp work, high loading and bulk loading and when the flight lands, he does the break up of the baggage and ensuring that they are loaded into the containers for the same to be picked up by disembarking passengers . He has also done the special handling work in respect of first class

and business class passengers. With regard to cargo flights he did loading and off loading and palletising. For the aforesaid work, the Petitioner has been employed continuously without any break for more than 480 days within a period of 24 calendar months. He was ." employed continuously from 1987 till the date of his termination. On 2-5-98 a notice by the Petitioner and other similarly placed workmen was issued through a counsel to the II Party/ Management M/s. Singapore Airlines Ltd. seeking that the Petitioners may be made permanent and the management should not attempt to bring in a contractor in a relationship that was hitherto direct. Then, when the Petitioner along with similarly placed workmen reported for duty on 4-5-98, Mr. Lim Thorn Cheng the Station Manager and Mr. Srinivasan the Assistant Station Manager of the II Party/Management at Anna International Airport. Chennai, called the workmen into the Station Manager's cabin locked the door and scolded the workmen for having gone to the lawyer and thereafter took away the temporary passes issued to them by the Bureau of Civil Aviation Authority, Chennai. Thereafter, they were asked to go out. This was done after they had completed their work for the departure of the Singapore Airlines flight. They were kept inside the Manager's cabin from 00.00 hours to 02.00 hours on the night of 4th/5th May, 1998. The workers were during that time asked either to sign on the contract agreeing to work under the contractor or failing which it was said that their services stood terminated. Significantly, Mr. Rosaiah S/o. Mr. Devaiyah employed by the II Party/ Management from 1993 who was not one of the workmen involved in the notice was given back his temporary pass issued by the Bureau of Civil Aviation Security, Chennai. The Petitioner and Mr. Anandaraman did not attend the work on 4.5.98 and hence their passes were not taken. However, when the Petitioner reported for duty on the next day i.e. on 05.05.98 he was denied employment by the II Party/Management. Thus, the Petitioner and similarly placed workmen were terminated from service without any notice and solely with a view to victimise the Petitioner for claiming permanency and other labour welfare benefits to which he is entitled to under the various labour welfare legislations. Immediately thereafter on 5th May, 1998, a lawyer's notice was issued to the Singapore Airlines and various other officials including Mr. Lim Thong Cheng and Mr. Srinivasan objecting to the Petitioner's termination and the termination of service of similarly placed workmen like the Petitioner in the circumstances done and seeking reinstatement with all consequential benefits including permanency and by mentioning that they have committed unfair labour practice. A reply was issued on behalf of the management through their counsel on 19-5-98. In that reply, the termination of the Petitioner and others from service had not been denied. Then the Petitioner raised an industrial dispute under section 2A of the Act before the Assistant Labour Commissioner (Central) Chennai. The impugned termination of the Petitioner from service w.e.f. 5.-5-98 is arbitrary, illegal, capricious and whimsical. The Petitioner has been victimised for trying to assert his rights conferred on him under various labour welfare legislations. The action of the Respondent in terminating the Petitioner amounts to retrenchment within the meaning of Section 2(oo) of Industrial Disputes Act, 1947. The Respondent has not complied with the conditions precedent mandated under section 25F of the Act. The action of the Respondent in seeking to introduce contract labour system in a relationship which was hitherto direct amounts to changing the service conditions for which statutory notice under section 9A had not been given. It is an offence as per the provisions of Industrial Disputes Act, 1947. The Respondent/Management is not justified in refusing to confer permanency on the Petitioner and similarly placed workmen even though they had been working continuously for a very long period of time. The action of the Respondent/ Management is in violation of Article 21 of Constitution of India. The last drawn wages of the Petitioner was Rs. 1050/- p.m. The permanent employees of the Respondent/Management in the last grade are being paid Rs.14,000/- p.m Hence is, therefore prayed that this Hon'ble court may be pleased to pass an award directing the Respondent/Management to reinstate the Petitioner and regularise and absorb him in the services of the Respondent/Management and pay him all past benefits as was paid to the permanent workman with all other consequent benefits including seniority, back wages etc.

3. The averments in the Counter Statement filed by the II Party/Management, Singapore Airlines Ltd. (hereinafter refers to as Respondent) are briefly as follows:-

.A Ground Handling Agreement was entered into between M/s. Singapore Airlines and M/s. Air India in the year 1988, which was renewed from time to time. The Annexure B clause 4.2 of the agreement states that M/s. Air India, the handling company shall provide service personnel for handling baggage in the Respondent's aircrafts. Under above agreement, the Respondent is only referred to as the 'Carrier' and Air India as 'Handling Company'. Occasionally, when there are over crowding of passengers or arrival of baggage and if a personnel provided by Air India for handling baggage failed to report in time or absent, the Respondent will engage Casual Labourers purely on temporary basis for clearance of baggage, which will amount to an implied contractual engagement. Neither the Petitioner/Workman nor similarly placed persons claiming employment with the Respondent has been engaged on regular basis. The Respondent do not maintain any records relating to temporary/casual engagements, since such engagements arise occasionally. Such temporary engagement of Casual Labourers by the Respondent occasionally will not vest any right on the Petitioner/ Workman to claim benefits under Industrial Disputes Act, 1947 alleging contravention of Section 25F and 25N of the said Act. Temporary, contractual engagements of Casual Labourers if at all will only fall within the ambit of Section

2(oo) (bb) of the Industrial Disputes Act, 1947, which is an exception to retrenchment. Hence, the non-employment of the petitioner/Workman did not amount to retrenchment and he cannot claim any relief from the Respondent/ Management under Industrial Disputes Act, much less retrenchment compensation or re-employment. Inasmuch as, personnel for handling baggage for the aircrafts are provided by Air India, this Respondent/Management is not liable to give employment to the Petitioner. Neither the Petitioner nor similarly placed persons before the authority were engaged in any vacancy or post. There is no vacancy or post available with the Respondent to offer employment to the Petitioner/Workman. The claim of the Petitioner/ Workman is stale barred by laches and as such, the Petitioner is not entitled to seek benefits under Industrial Disputes Act from the Respondent. It is false to contend that the Petitioner joined the services of the Respondent/ Management for doing the work relating to both passenger and cargo transport. The Petitioner was engaged occasionally to handle over crowding of passengers or arrival of baggage. Therefore, it is incorrect to state that he was given duties as a loader to load the baggage in the aircraft and he was asked to work for baggage identification. M/s. Air India who is the handling company provides personnel for handling baggage of the Respondent aircrafts. There is no nexus of employer and employee relationship between the Petitioner and Respondent/Management. The Petitioner cannot maintain the industrial dispute in the absence of any positive proof of employer-employee relationship between him and the Respondent/Management and hence, it is liable to be dismissed in limini. It is denied that the Petitioner had completed 480 days of continuous service in a period of 24 calendar months from the year 1992. It was purely on a temporary basis, casual to meet the exigencies as mentioned earlier which will amount to an implied contract at the best. Hence, such engagement falls within the definition of Section 2(oo)(bb) of Industrial Disputes Act, 1947 and the question of issuance of notice and illegal termination do not arise much less retrenchment. The Petitioner has come forward with his petition alleging non-employment of the Respondent/Management with an ulterior motive and malafide intention only to harass the Respondent for seeking monetary benefits. The alleged non-compliance of Section 25F and Section 25N of the Industrial Disputes Act, 1947 are all untenable and cannot be sustained. The Petitioner's counsel's notice dated 2-5-98 was suitably answered by the Respondent's counsel's reply dated 19-5-98. The allegations in the Claim Statement about the alleged occurrence on 4-5-98 in the Station Manager's cabin are denied as false. The notice dated 5-5-98 was suitably answered by the reply notice dated 5-6-98 issued through the counsel of the Respondent. The alleged termination of the services of the Petitioner and similarly placed persons does not amount to unfair labour practice. There is no illegal or malafide termination of service of the Petitioner, since he was employed only on a casual basis. The question of violation of Section 9A of the Industrial Disputes Act, 1947 does not arise in the facts and circumstances of the case. Since the Petitioner was engaged on casual basis as and when exigency arose, the question of paying monthly wages does not arise at all. The claims are all ill-founded, misconceived, untenable and consequently, the Petitioner is not entitled to any relief much less reinstatement in service, back wages, continuity of service attendant benefits. Hence, it is prayed that the claim of the Petitioner may be dismissed.

4. When the matter was taken up for enquiry on 17-09-2002, the counsel for the II Party/Management alone was present, neither the I Party nor his counsel on record present. No oral or documentary evidence was let in on either side. After it was reported by the learned counsel for the II Party/Management that they have no oral evidence, the evidence was closed and posted for arguments for the counsel on either side. After the case has been adjourned twice for advancing the arguments of learned counsel on either side and was taken finally on 10-10-2002, the counsel who appeared for the II Party/Management had advanced his arguments and as the counsel for the I Party was not Present to advance his arguments, it was held as no arguments for I Party and it was reserved for orders.

5. The point for my consideration is -

"Whether the action of the management of M/s. Singapore Airlines Ltd., Chennai, in terminating the service of the workman Sri P.Somu from 05-05-98 is justified or not? If not justified, to what relief the workman is entitled?"

Point :—

It is the case of the Petitioner that he joined the services of the Singapore Airlines Ltd. for doing the work relating to both passenger and cargo transport and he was illegally denied employment w.e.f. 05-05-98 and that he has been employed continuously for more than 480 days within a period of 24 calendar months and that he was not paid retrenchment compensation and he was not given any notice in writing or wages in lieu of notice and hence such termination is bad for non-compliance of Section 25F of Industrial Disputes Act. The Respondent/Management would contend that a ground handling agreement was entered into between the Respondent and the Air India in the year 1988 which was renewed from time to time and that M/s. Air India, the Handling Company shall provide service personnel for handling baggage in the Respondent's Aircraft and that occasionally when there are over crowding of passengers or arrival of baggage and if personnel provided by the Air India for handling baggage failed to report in time or absent, the Respondent will engage Casual Labourers purely on temporary basis for clearance of baggage which would amount to an implied contractual engagement and hence, the workman like Petitioner have never been engaged on a regular basis and such temporary engagement of Casual Labourers by the Respondent occasionally will not vest any right on the Petitioner/

Workman to claim benefits under Industrial Disputes Act alleging contravention of Section 25F of Industrial Disputes Act. It is further alleged that the non-employment of the Petitioner/Workman did not amount to retrenchment and he cannot claim any relief from the management under the Industrial Disputes Act much less retrenchment compensation or re-employment. It is also alleged by the Respondent/Management that the temporary contractual agreement for Casual Labourers if at all will only fall within the ambit of Section 2(oo)(bb) of the Industrial Disputes Act, 1947 which is an exception to retrenchment. Hence the Petitioner cannot claim any relief from the Respondent/ Management much less retrenchment compensation or re-employment. In support of the contention of the Respondent/Management in their Counter Statement, a xerox copy of the ground handling agreement entered into between the Singapore Airlines and Air India has been filed into Court, after furnishing a copy of the same to other side. It is not disputed on the side of the Petitioner. The Petitioner has not chosen to let in oral or documentary evidence in support of his contention in the Claim Statement. Except raising a plea in the Claim Statement that a notice was sent through his counsel to the Respondent/ Management and a repiy has been received for the same from the counsel for the Respondent/Management, no evidence either oral or documentary has been let in, in support of that version. Apart from that there is absoluteiy no oral or documentary evidence on the side of the Petitioner/Workman to prove his alleged continuous service directly under the Respondent/Management. As per the contention of the Respondent/Management, no evidence worth considering has been let in by the Petitioner to show that there was employer-empioyee reiationship existed between the Respondent/Management and the Petitioner/ Workman. In the Claim Statement also, the Petitioner has not given any particulars about the days he worked under Respondent/Management in respect of the work reiating to both passenger and cargo transport and on other capacities as a workman. He has simply stated in his Claim Statement that he has been employed continuously without any break for more than 480 days within a period of 24 calendar months. For his averment in the Cialm Statement that he attended the work mentioned in the Claim Statement and that he worked continuously without any break for more than 480 days within a period of 24 calendar months, he has not produced any substantial evidence . It is the specific contention of the Respondent in the Counter Statement that the persons iike the Petitioner were engaged by the Respondent, Singapore Airlines Ltd. as Casual Labourers purely on temporary basis for clearance of baggage as and when occasion arises and that the Respondent/Management used to engage Casual Labourers on daily wage basis at the time of heavy arrivals and departures of flights and such employment they used to make on tempofary basis and they never used to engage them continuously for a period of 240 days in 12 calendar months. So from these contentions of either parties, it can be said that the allegation of the Petitioner that he had worked for more than 480 days continuously within a period of 24 calendar months is not correct. When the Petitioner has raised this claim to avail the relief prayed for in the ciaim petition from the Respondent/Management, he has to prove his plea in the Claim Statement with acceptable legal evidence that he had been employed continuously without any break for more than 480 days within a period of 24 calendar months. Thus, the Petitioner/Workman has not discharged his burden, though the onus is on him to prove that he had worked 480 days continuously in a period of 24 calendar months. The Respondent in their Counter Statement has stated that the Respondent/Management emphatically denies that the Petitioner has completed 240 days of continuous service in a period of 12 calendar months. The learned counsel for the Respondent had also argued that the Petitioner has failed to proved with acceptable legal evidence that he had worked for 240 days in a period of 12 calendar months /480 days continuously for a period of 24 calendar months. Hence, he cannot ask for the relief of reinstatement into service as that of a permanent workman. He had also relied upon a decision of Supreme Court reported as 2002 FACTORIES JOURNAL REPORT Vol.100 pg.397 between RANGE FOREST OFFICER and S.T.HADIMANI. In that case the Supreme Court has held that since the claim of the workman that he had worked for 240 days was denied by the Management, it is for the workman to lead evidence to show that he had in fact, worked for 240 days and that in the absence of proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for that period, it cannot be concluded that the workman had in fact, worked for 240 days and the onus is on the workman to prove the claim with sufficient records and mere an affidavit is not sufficient. "The decision of the Supreme Court in this case is quite applicable to the present case also. It is further argued by the learned counsel for the Respondent that the averment in the Counter Statement of the Respondent to that effect that the Respondent/Management had entered into ground handling agreement with Air India and in pursuance of the same. Air India has taken care of the ground handling work, which the Petitioner was said to have attended the work relating to both passenger and cargo transport, and the same has not been denied by the Petitioner. Though the period of work alleged by the Petitioner in his Claim Statement has been emphatically denied in the Counter Statement of the Respondent/ Management, the Petitioner has not chosen to prove his alleged period of service with acceptable legal oral or documentary evidence. it is further argued by the learned counsel for the Respondent that the people like the Petitioner/Workman have been engaged as a casual employees at the time of exigencies to meet the requirement or personnel for handling baggage for aircrafts during the period of over crowding of passengers or arrival of baggage

and the personnel provided by Air India for that work failed to report in time or remains absent. This has not been disputed by the Petitioner as incorrect or false. The learned counsel would further contend that such casual employment would amount to only implied contractual agreement, which squarely comes under Section 2(oo)(bb) of Industrial Disputes Act, 1947 which is an exception to retrenchment and hence there was no retrenchment in the case of the Petitioner's non-employment and he cannot claim any relief from the Respondent/Management under the Industrial Disputes Act, 1947 and that he cannot claim retrenchment compensation or re-employment. He would further argue that mere pleadings of the Petitioner in his Claim Statement that he was employed under the Respondent/Management for a particular period is not suffice and as per the decision of Madras High Court in a case reported as 2001 4 LLN 903 the Petitioner has to prove the pleading by letting sufficient evidence. In the above cited case, the Hon'ble High Court of Madras has held that "the allegation which was not pleaded and even if evidence is adduced in that regard cannot be examined because the other side had no notice of it and if such evidence is entertained it would tantamount to granting unfair advantage to the party who had not pleaded his case properly". So from this, it is seen that argument advanced by the learned counsel for the Respondent/Management can be accepted as correct as there is no evidence to show in this case, on the side of the Petitioner, that he has been employed under the Respondent/Management Singapore Airlines and was in continuous employment for more than 480 days in a period of 24 calendar months. So, from all these things, it is seen that the Petitioner cannot ask for reinstatement in service. From the available evidence, it is seen that the Petitioner was engaged only as a casual workman by the Respondent/Management as and when occasion arises. So by the very nature of the employment of the Petitioner, he has no assurance that he would be employed by the Respondent/Management for any specified duration. The persons like Petitioner temporary employment could not be for any period for which they can look forward to assured work from the employer. It is held by the High Court of Madras in a case reported as 2001 3 LLN 807 between L T McNEIL LTD. MADRAS and PRESIDING OFFICER, MADRAS LABOUR COURT AND ANOTHER that "casual workmen have only to report each day and hope that employment would be provided to them on that day. Their not going to the place of employer will not result in any penalty as they are not assured of work daily. This kind of employment, therefore, cannot be treated on par with the temporary and permanent employment. The employers are not bound to provide work to casual workmen unless they choose to and there is work for the day. Directing reinstatement of casual workman who had worked as such, for a relatively short period of time, would only mean that their names would once again be included in the list of casual workmen putting them in the same position they were earlier, where they would only report for the employment with the hope being providing with the work and no more." This observation of the High Court of Madras in the above cited case is applicable to the facts of this case also.

6. The learned counsel for the Respondent/ Management had argued that the Petitioner has not at all pleaded in the Claim Statement that prior to the termination he had worked for 240 days continuously but it is his plea that he had worked 480 days in 24 calendar months and the same also has not been proved and that the Petitioner is not entitled for any permanent employment. Since he was engaged only as a casual worker as and when required due to the exigencies, the question of termination does not arise and hence they are not entitled to the relief of reinstatement also as a permanent employee of the Respondent/Management.

7. On the basis of the available materials in this case, the argument advanced by the learned counsel for the Respondent/Management can be accepted as correct. Under such circumstances, it can be concluded that there is no question of termination of the service of the Petitioner by the Respondent/Management and the non-employment of the Petitioner does not amount to any retrenchment. Hence, it can be concluded that the non-employment of the Petitioner/Workman Sri P.Somu by the Respondent/ Management, Singapore Airlines Ltd., Chennai is justified and hence the concerned workman is not entitled to any relief. Thus, the point is answered accordingly.

8. In the result, an Award is passed holding that the I Party/Workman Sri P.Somu is not entitled for any relief. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 20th November, 2002.)

K. KARTHIKEYAN, Presiding Officer.

Witnesses Examined:—

On either side : None

Exhibits marked:—

On either side : Nil

नई दिल्ली, 11 दिसम्बर, 2002

का. आ. 39.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंगापुर एअर लाइंस लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पंचाट (संदर्भ संख्या 681/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-12-2002 को प्राप्त हुआ था।

[सं. एल-11012/13/99-आई. आर. (सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 11th December, 2002

S.O. 39.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 681/2001) of the Central Government Industrial Tribunal Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Singapore Airlines Ltd. and their workman, which was received by the Central Government on 2-12-2002.

[No. L-11012/13/99-IR (C. I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT CHENNAI

Wednesday, the 20th November, 2002

PRESENT

K. KARTHIKEYAN,

PRESIDING OFFICER

INDUSTRIAL DISPUTE NO. 681/2001

(Tamil Nadu Principal Labour Court CGID, No. 319/99)

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Workman Sri N.C.Gowthaman and the Managing Director, Singapore Airlines Ltd., Chennai.)

BETWEEN

Sri N. C. Gowthaman	:	I Party/Workman

AND

The Managing Director, Singapore Airlines Ltd., Chennai.	:	II Party/Management

APPEARANCES:

For the Petitioner	:	M/s. V. Prakash & P. Ramkumar & A. Lakshmi, Advocates.
For the Respondent	:	M/s. King & Partridge, Advocates

AWARD

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned dispute for adjudication vide Order No.L-11012/13/99/IR (CM-I) dated 18-05-1999.

This reference has been made earlier to the Tamil Nadu Principal Labour Court, Chennai, where it was taken on file as CGID. No. 319/99. When the matter was pending enquiry in that Labour Court, as per the orders of the Central Government, Ministry of Labour this case has also been transferred from the file of Tamil Nadu Principal Labour Court to this Tribunal for adjudication. On receipt of records from that Principal Labour Court, this case has been taken on file as I. D. No. 681/2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 16-10-2001 with their respective parties and to prosecute this case further. Accordingly, the learned counsel on either side along with their respective parties have appeared and prosecuted this case. The Claim Statement of the I Party/Workman and the Counter Statement of the II Party/Management were filed, when this matter was pending before the Tamil Nadu Principal Labour Court itself.

Upon perusing the Claim Statement, Counter Statement, the other material papers on record, after hearing the arguments advanced by the learned counsel for the II Party/Management and this matter having stood over till this date for consideration, this Tribunal' has passed the following: —

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt. for adjudication by this Tribunal is as follows: —

> "Whether the action of the management of M/s. Singapore Airlines Ltd., Chennai, in terminating the service of the workman Sri N.C.Gowthaman from 05-05-98 is justified or not? If not justified, to what relief the workman is entitled?"

2. The averments in the Claim Statement filed by the I Party/Workman Sri N.C.Gowthaman (hereinafter refers to as Petitioner) are briefly as follows:—

The Petitioner has been working in the Madras Airport employed by M/s. Singapore Airlines Ltd. II Party/Management (hereinafter refers to as Respondent) for doing the work relating to both passenger and cargo transport. He does the work of wheel chair assistance for handicapped passengers, assistance in the ticket checking counter for taking the baggage, putting the baggage tag on and putting them on conveyor belt and ensuring proper movement of these articles on the conveyor belt and thereafter removing the same from the Conveyor belt and doing the baggage make up i.e. ensuring proper loading of these baggage into the containers. He has also done the ground duties i.e. ramp work, high loading and bulk loading and when the flight lands, he does the break up of the

baggage and ensuring that they are loaded into the containers for the same to be picked up by disembarking passengers . He has also done the special handling work in respect of first class and business class passengers. With regard to cargo flights he did loading and off loading and palletising. For the aforesaid work, the Petitioner has been employed continuously without any break for more than 480 days within a period of 24 calendar months. He was employed continuously from 1992 till the date of his termination. On 2-5-98 a notice by the Petitioner and other similarly placed workmen was issued through a counsel to the II Party/Management M/s. Singapore Airlines Ltd. seeking that the Petitioners may be made permanent and the management should not attempt to bring in a contractor in a relationship that was hitherto direct. Then, when the Petitioner along with similarly placed workmen reported for duty on 4-5-98, Mr. Lim Thorn Cheng the Station Manager and Mr. Srinivasan the Assistant Station Manager of the II Party/Management at Anna International Airport, Chennai, called the workmen into the Station Manager's cabin locked the door and scolded the workmen for having gone to the lawyer and thereafter took away the temporary passes issued to them by the Bureau of Civil Aviation Authority, Chennai. Thereafter, they were asked to go out. This was done after they had completed their work for the departure of the Singapore Airlines flight. They were kept inside the Manager's cabin from 00.00 hours to 02.00 hours on the night of 4th/5th May, 1998. The workers were during that time asked either to sign on the contract agreeing to work under the contractor or failing which it was said that their services stood terminated. Significantly, Mr. Rosaiah, S/o. Mr. Devaiyah employed by the II Party/Management from 1993 who was not one of the workmen involved in the notice was given back his temporary pass issued by the Bureau of Civil Aviation Security, Chennai. Mr. Somu and Mr. Anandaraman did not attend the work on 4-5-98 and hence their passes were not taken. However, when the Petitioner reported for duty on the next day i.e. on 05-05-98 he was denied employment by the II Party/Management. Thus, the Petitioner and similarly placed workmen were terminated from service without any notice and solely with a view to victimise the Petitioner for claiming permanency and other labour welfare benefits to which he is entitled to under the various labour welfare legislations. Immediately thereafter on 5th May, 1998, a lawyer's notice was issued to the Singapore Airlines and various other officials including Mr. Lim Thong Cheng and Mr. Srnivasan objecting to the Petitioner's termination and the termination of service of similarly placed workmen like the Petitioner in the circumstances done and seeking reinstatement with all consequential benefits including permanency and by mentioning that they have committed unfair labour practice. A reply was issued on behalf of the management through their counsel on 19-5-98. In that reply, the termination of the Petitioner and others from service had not been denied. Then the Petitioner raised an industrial dispute under section 2A of the Act before the Assistant Labour Commissioner (Central) Chennai. The impugned termination of the Petitioner from service w.e.f. 5-5-98 is arbitrary, illegal, capricious and whimsical. The Petitioner has been victimised for trying to assert his rights conferred on him under various labour welfare legislations. The action of the Respondent In terminating the Petitioner amounts to retrenchment within the meaning of Section 2(oo) of Industrial Disputes Act, 1947. The Respondent has not complied with the conditions precedent mandated under section 25F of the Act. The action of the Respondent in seeking to introduce contract labour system in a relationship which was hitherto direct amounts to changing the service conditions for which statutory notice under section 9A had not been given. It is an offence as per the provisions of Industrial Disputes Act, 1947. The Respondent/Management is not justified in refusing to confer permanency on the Petitioner and similarly placed workmen even though they had been working continuously for a very long period of time. The action of the Respondent/ Management is in violation of Article 21 of Constitution of India. The last drawn wages of the Petitioner was Rs. 1050/- p.m. The permanent employees of the Respondent/ Management in the last grade are being paid Rs. 14,000/- p.m. Hence is, therefore prayed that this Hon'ble Court may be pleased to pass an award directing the Respondent/ Management to reinstate the Petitioner and regularise and absorb him in the services of the Respondent/Management and pay him all past benefits as was paid to the permanent workman with all other consequent benefits including seniority, back wages etc.

3. The averments in the Counter Statement filed by the II Party/Management, Singapore Airlines Ltd. (hereinafter refers to as Respondent) are briefly as follows :—

A Ground Handling Agreement was entered into between M/s. Singapore Airlines and M/s. Air India in the year 1988, which was renewed from time to time. The Annexure B clause 4.2 of the agreement states that M/s. Air India, the handling company shall provide service personnel for handling baggage in the Respondent's aircrafts. Under above agreement, the Respondent is only referred to as the 'Carrier' and Air India as 'Handling Company'. Occasionally, when there are over crowding of passengers or arrival of baggage and if a personnel provided by Air India for handling baggage failed to report in time or absent, the Respondent will engage Casual Labourers purely on temporary basis for clearance of baggage, which will amount to an implied contractual engagement. Neither the Petitioner/Workman nor similarly placed persons claiming employment with the Respondent has been engaged on regular basis. The Respondent do not maintain any records relating to temporary/casual engagements, since such engagements arise occasionally. Such temporary engagement of Casual Labourers by the Respondent

occasionally will not vest any right on the Petitioner/ Workman to claim benefits under Industrial Disputes Act, 1947 alleging contravention of Section 25F and 25N of the said Act. Temporary, contractual engagements of Casual Labourers if at all will only fall within the ambit of Section 2(oo) (bb) of the Industrial Disputes Act, 1947, which is an exception to retrenchment. Hence, the non-employment of the Petitioner/Workman did not amount to retrenchment and he cannot claim any relief from the Respondent/ Management under Industrial Disputes Act, much less retrenchment compensation or re-employment. Inasmuch as, personnel for handling baggage for the aircrafts are provided by Air India, this Respondent/Management is not liable to give employment to the Petitioner. Neither the Petitioner nor similarly placed persons before the authority were engaged in any vacancy or post. There is no vacancy or post available with the Respondent to offer employment to the Petitioner/Workman. The claim of the Petitioner/ Workman is stale barred by laches and as such, the Petitioner is not entitled to seek benefits under Industrial Disputes Act from the Respondent. It is false to contend that the Petitioner joined the services of the Respondent/ Management for doing the work relating to both passenger and cargo transport. The Petitioner was engaged occasionally to handle over crowding of passengers or arrival of baggage. Therefore, it is incorrect to state that he was given duties as a loader to load the baggage in the aircraft and he was asked to work for baggage identification. M/s. Air India who is the handling company provides personnel for handling baggage of the Respondent aircrafts. There is no nexus of employer and employee relationship between the Petitioner and Respondent/Management. The Petitioner cannot maintain the industrial dispute in the absence of any positive proof of employer-employee relationship between him and the Respondent/Management and hence, it is liable to be dismissed in limini. It is denied that the Petitioner had completed 480 days of continuous service in a period of 24 calendar months from the year 1992. It was purely on a temporary basis, casual to meet the exigencies as mentioned earlier which will amount to an implied contract at the best. Hence, such engagement falls within the definition of Section 2(oo)(bb) of Industrial Disputes Act, 1947 and the question of issuance of notice and illegal termination does not arise much less retrenchment. The Petitioner has come forward with his petition alleging non-employment of the Respondent/ Management with an ulterior motive and malafide intention only to harass the Respondent for seeking monetary benefits. The alleged non-compliance of Section 25F and Section 25N of the Industrial Disputes Act, 1947 are all untenable and cannot be sustained. The Petitioner's counsel's notice dated 2-5-98 was suitably answered by the Respondent's counsel's reply dated 19-5-98. The allegations in the Claim Statement about the alleged occurrence on 4-5-98 in the Station Manager's cabin are denied as false. The notice dated 5-5-98 was suitably answered by the reply notice dated 5-6-98 issued through the counsel of the Respondent. The alleged termination of the services of the Petitioner and similarly placed persons does not amount to unfair labour practice. There is no illegal or malafide termination of service of the Petitioner, since he was employed only on a casual basis. The question of violation of Section 9A of the Industrial Disputes Act, 1947 does not arise in the facts and circumstances of the case. Since the Petitioner was engaged on casual basis as and when exigency arose, the question of paying monthly wages does not arise at all. The claims are all ill-founded, misconceived, untenable and consequently, the Petitioner is not entitled to any relief much less reinstatement in service, back wages, continuity of service attendant benefits. Hence, it is prayed that the claim of the Petitioner may be dismissed.

4. When the matter was taken up for enquiry on 17-9-2002, the counsel for the II Party/Management alone was present, neither the I Party nor his counsel on record present. No oral or documentary evidence was let in on either side. After it was reported by the learned counsel for the II Party/Management that they have no oral evidence, the evidence was closed and posted for arguments for the counsel on either side. After the case has been adjourned twice for advancing the arguments of learned counsel on either side and was taken finally on 10-10-2002, the counsel who appeared for the II Party/Management had advanced his arguments and as the counsel for the I Party was not present to advance his arguments, it was held as no arguments for I Party and it was reserved for orders.

5. The point for my consideration is—

"Whether the action of the management of M/s. Singapore Airlines Ltd., Chennai, in terminating the service of the workman Sri N.C.Gowthaman from 5-05-98 is justified or not? If not justified, to what relief the workman is entitled?"

Point:—

It is the case of the Petitioner that he joined the services of the Singapore Airlines Ltd. for doing the work relating to both passenger and cargo transport and he was illegally denied employment w.e.f. 5-5-98 and that he has been employed continuously for more than 480 days within a period of 24 calendar months and that he was not paid retrenchment compensation and he was not given any notice in writing or wages in lieu of notice and hence such termination is bad for non-compliance of Section 25F of Industrial Disputes Act. The Respondent/Management would contend that a ground handling agreement was entered into between the Respondent and the Air India in the year 1988 which was renewed from time to time and that M/s. Air India, the Handling Company shall provide service personnel for handling baggage in the Respondent's Aircraft and that occasionally when there are over crowding

of passengers or arrival of baggage and if personnel provided by the Air India for handling baggage failed to report in time or absent, the Respondent will engage Casual Labourers purely on temporary basis for clearance of baggage which would amount to an implied contractual engagement and hence, the workman like Petitioner have never been engaged on a regular basis and such temporary engagement of Casual Labourers by the Respondent occasionally will not vest any right on the Petitioner/ Workman to claim benefits under Industrial Disputes Act alleging contravention of Section 25F of Industrial Disputes Act. It is further alleged that the non-employment of the Petitioner/Workman did not amount to retrenchment and he cannot claim any relief from the management under the Industrial Disputes Act much less retrenchment compensation or re-employment. It is also alleged by the Respondent/Management that the temporary contractual agreement for Casual Labourers if at all will only fall within the ambit of Section 2(oo)(bb) of the Industrial Disputes Act, 1947 which is an exception to retrenchment. Hence the Petitioner cannot claim any relief from the Respondent/ Management much less retrenchment compensation or re-employment. In support of the contention of the Respondent/Management in their Counter Statement, a xerox copy of the ground handling agreement entered into between the Singapore Airlines and Air India has been filed into Court, after furnishing a copy of the same to other side. It is not disputed on the side of the Petitioner. The Petitioner has not chosen to let in oral or documentary evidence in support of his contention in the Claim Statement. Except raising a plea in the Claim Statement that a notice was sent through his counsel to the Respondent/ Management and a reply has been received for the same from the counsel for the Respondent/Management, no evidence either oral or documentary has been let in, in support of that version. Apart from that there is absolutely no oral or documentary evidence on the side of the Petitioner/Workman to prove his alleged continuous service directly under the Respondent/Management. As per the contention of the Respondent/Management, no evidence worth considering has been let in by the Petitioner to show that there was employer-employee relationship existed between the Respondent/Management and the Petitioner/Workman. In the Claim Statement also, the Petitioner has not given any particulars about the days he worked under Respondent/Management in respect of the work relating to both passenger and cargo transport and on other capacities as a workman. He has simply stated in his Claim Statement that he has been employed continuously without any break for more than 480 days within a period of 24 calendar months. For his averment in the Claim Statement that he attended the work mentioned in the Claim Statement and that he worked continuously without any break for more than 480 days within a period of 24 calendar months, he has not produced any substantial evidence . It is the specific contention of the Respondent in the Counter Statement that the persons like the Petitioner were engaged by the Respondent, Singapore Airlines Ltd. as Casual Labourers purely on temporary basis for clearance of baggage as and when occasion arises and that the Respondent/Management used to engage Casual Labourers on daily wage basis at the time of heavy arrivals and departures of flights and such employment they used to make on temporary basis and they never used to engage them continuously for a period of 240 days in 12 calendar months. So from these contentions of either parties, it can be said that the allegation of the Petitioner that he had worked for more than 480 days continuously within a period of 24 calendar months is not correct. When the Petitioner has raised this claim to avail the relief prayed for in the claim petition from the Respondent/Management, he has to prove his plea in the Claim Statement with acceptable legal evidence that he had been employed continuously without any break for more than 480 days within a period of 24 calendar months. Thus, the Petitioner/Workman has not discharged his burden, though the onus is on him to prove that he had worked 480 days continuously in a period of 24 calendar months. The Respondent in their Counter Statement has stated that the Respondent/Management emphatically denies that the Petitioner has completed 240 days of continuous service in a period of 12 calendar months. The learned counsel for the Respondent had also argued that the Petitioner has failed to prove with acceptable legal evidence that he had worked for 240 days in a period of 12 calendar months/480 days continuously for a period of 24 calendar months. Hence, he cannot ask for the relief of reinstatement into service as that of a permanent workman. He had also relied upon a decision of Supreme Court reported as 2002 FACTORIES JOURNAL REPORT Vol.100 pg. 397 between RANGE FOREST OFFICER and S.T. HADIMANI. In that case the Supreme Court has held that *"since the claim of the workman that he had worked for 240 days was denied by the Management, it is for the workman to lead evidence to show that he had in fact, worked for 240 days and that in the absence of proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for that period, it cannot be concluded that the workman had in fact, worked for 240 days and the onus is on the workman to prove the claim with sufficient records and mere an affidavit is not sufficient."* The decision of the Supreme Court in this case is quite applicable to the present case also. It is further argued by the learned counsel for the Respondent that the averment in the Counter Statement of the Respondent to that effect that the Respondent/ Management had entered into ground handling agreement with Air India and in pursuance of the same, Air India has taken care of the ground handling work, which the Petitioner was said to have attended the work relating to both passenger and cargo transport, and the same has not been denied by the Petitioner. Though the period of work alleged by the Petitioner in his Claim Statement has been

emphatically denied in the Counter Statement of the Respondent/Management, the Petitioner has not chosen to prove his alleged period of service with acceptable legal oral or documentary evidence. It is further argued by the learned counsel for the Respondent that the people like the Petitioner/Workman have been engaged as a casual employees at the time of exigencies to meet the requirement or personnel for handling baggage for aircrafts during the period of over crowding of passengers or arrival of baggage and the personnel provided by Air India for that work failed to report in time or remains absent. This has not been disputed by the Petitioner as incorrect or false. The learned counsel would further contend that such casual employment would amount to only implied contractual agreement, which squarely comes under section 2(oo)(bb) of Industrial Disputes Act, 1947 which is an exception to retrenchment and hence there was no retrenchment in the case of the Petitioner's non-employment and he cannot claim any relief from the Respondent/Management under the Industrial Disputes Act, 1947 and that he cannot claim retrenchment compensation or re-employment. He would further argue that mere pleadings of the Petitioner in his Claim Statement that he was employed under the Respondent/Management for a particular period is not suffice and as per the decision of Madras High Court in a case reported as 2001 4 LLN 903 the Petitioner has to prove the pleadings by letting sufficient evidence. In the above cited case, the Hon'ble High Court of Madras has held that "*the allegation which was not pleaded and even if evidence is adduced in that regard cannot be examined because the other side had no notice of it and if such evidence is entertained it would tantamount to granting unfair advantage to the party who had not pleaded his case properly*". So from this, it is seen that argument advanced by the learned counsel for the Respondent/ Management can be accepted as correct as there is no evidence to show in this case, on the side of the Petitioner, that he has been employed under the Respondent/ Management Singapore Airlines and was in continuous employment for more than 480 days in a period of 24 calendar months. So, from all these things, it is seen that the Petitioner cannot ask for reinstatement in service. From the available evidence, it is seen that the Petitioner was engaged only as a casual workman by the Respondent/Management as and when occasion arises. So by the very nature of the employment of the Petitioner, he has no assurance that he would be employed by the Respondent/Management for any specified duration. The persons like Petitioner temporary employment could not be for any period for which they can look forward to assured work from the employer. It is held by the High Court of Madras in a case reported as 2001 3 LLN 807 between L & T McNEIL LTD. MADRAS and PRESIDING OFFICER, MADRAS LABOUR COURT AND ANOTHER that "*casual workmen have only to report each day and hope that employment would be provided to them on that day. Their not going to the place of employer will not result in any penalty as they are not assured of work daily. This kind of employment, therefore, cannot be treated on par with the temporary and permanent employment. The employers are not bound to provide work to casual workmen unless they choose to and there is work for the day. Directing reinstatement of casual workman who had worked as such for a relatively short period of time, would only mean that their names would once again be included in the list of casual workmen putting them in the same position they were earlier, where they would only report for the employment with the hope being providing with the work and no more.*" This observation of the High Court of Madras in the above cited case is applicable to the facts of this case also.

6. The learned counsel for the Respondent/ Management had argued that the Petitioner has not at all pleaded in the Claim Statement that prior to the termination he had worked for 240 days continuously but it is his plea that he had worked 480 days in 24 calendar months and the same also has not been proved and that the Petitioner is not entitled for any permanent employment. Since he was engaged only as a casual worker as and when required due to the exigencies, the question of termination does not arise and hence they are not entitled to the relief of reinstatement also as a permanent employee of the Respondent/Management.

7. On the basis of the available materials in this case, the argument advanced by the learned counsel for the Respondent/Management can be accepted as correct. Under such circumstances, it can be concluded that there is no question of termination of the service of the Petitioner by the Respondent/Management and the non-employment of the Petitioner does not amount to any retrenchment. Hence, it can be concluded that the non-employment of the Petitioner/Workman Sri N.C.Gowthaman by the Respondent/Management, Singapore Airlines Ltd., Chennai is justified and hence the concerned workman is not entitled to any relief. Thus, the point is answered accordingly.

8. In the result, an Award is passed holding that the I Party/Workman Sri N.C.Gowthaman is not entitled for any relief. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 20th November, 2002.)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined :—

On either side : None

Exhibits marked:—

On either side : Nil

नई दिल्ली, 11 दिसम्बर, 2002

का. आ. 40.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंगापुर एअर लाइंस लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 680/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-12-2002 को प्राप्त हुआ था।

[सं. एल-11012/14/99-आई. आर. (सी-I)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 11th December, 2002

S.O. 40.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 680/2001) of the Central Government Industrial Tribunal, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Singapore Airlines Ltd. and their workman, which was received by the Central Government on 9-12-2002.

[No. L–11012/14/99–IR (C. I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT CHENNAI

Wednesday, the 20th November, 2002

PRESENT:

K. KARTHIKEYAN : Presiding Officer

INDUSTRIAL DISPUTE NO. 680/2001

(Tamil Nadu Principal Labour Court CGID No. 318/99)

(In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Workman Sri T. Loganathan and the Managing Director, Singapore Airlines Ltd., Chennai.)

BETWEEN

Sri T. Loganathan	:	I Party/Workman
AND		
The Managing Director, Singapore Airlines Ltd., Chennai.	:	II Party/Management

APPEARANCES:

For the Workman	:	M/s. V. Prakash & P. Ramkumar & A. Lakshmi, Advocates.
For the Management	:	M/s. King & Partridge, Advocates

ORDER

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned dispute for adjudication vide Order No.L-11012/14/99/IR (CM-I) dated 18-05-1999.

This reference has been made earlier to the Tamil Nadu Principal Labour Court, Chennai, where it was taken on file as CGID. No. 318/99. When the matter was pending enquiry in that Labour Court, as per the orders of the Central Government, MInistry of Labour this case has also been transferred from the file of Tamil Nadu Principal Labour Court to this Tribunal for adjudication. On receipt of records from that Principal Labour Court, this case has been taken on file as I. D. No. 680/2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 16-10-2001 with their respective parties and to prosecute this case further. Accordingly, the learned counsel on either side along with their respective parties have appeared and prosecuted this case. The Claim Statement of the I Party/Workman and the Counter Statement of the II Party/Management were filed, when this matter was pending before the Tamil Nadu Principal Labour Court itself.

Upon perusing the Claim Statement, Counter Statement, the other material papers on record, after hearing the arguments advanced by the learned counsel for the II Party/Management and this matter having stood over till this date for consideration, this Tribunal has passed the following: —

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt. for adjudication by this Tribunal is as follows: —

"Whether the action of the management of M/s. Singapore Airlines Ltd., Chennai, in terminating the service of the workman Sri T. Loganathan from 05-05-98 is justified or not? If not justified, to what relief the workman is entitled?"

2. The averments in the Claim Statement filed by the I Party/Workman Sri T. Loganathan (hereinafter refers to as Petitioner) are briefly as follows:—

The Petitioner has been working in the Madras Airport employed by M/s. Singapore Airlines Ltd. II Party/Management (hereinafter refers to as Respondent) for doing the work relating to both passenger and cargo transport. He does the work of wheel chair assistance for handicapped passengers, assistance in the ticket checking counter for taking the baggage, putting the baggage tag on and putting them on conveyor belt and ensuring proper

movement of these articles on the conveyor belt and thereafter removing the same from the conveyor belt and doing the baggage make up i.e. ensuring proper loading of these baggage into the containers. He has also done the ground duties i.e. ramp work, high loading and bulk loading and when the flight lands, he does the break up of the baggage and ensuring that they are loaded into the containers for the same to be picked up by disembarking passengers. He has also done the special handling work in respect of first class and business class passengers. With regard to cargo flights he did loading and off loading and palletising. For the aforesaid work, the Petitioner has been employed continuously without any break for more than 480 days within a period of 24 calendar months. He was employed continuously from 1992 till the date of his termination. On 2-5-98 a notice by the Petitioner and other similarly placed workmen was issued through a counsel to the II Party/Management M/s. Singapore Airlines Ltd. seeking that the Petitioners may be made permanent and the management should not attempt to bring in a contractor in a relationship that was hitherto direct. Then, when the Petitioner along with similarly placed workmen reported for duty on 4-5-98, Mr. Lim Thong Cheng the Station Manager and Mr. Srinivasan the Assistant Station Manager of the II Party/Management at Anna International Airport, Chennai, called the workmen into the Station Manager's cabin locked the door and scolded the workmen for having gone to the lawyer and thereafter took away the temporary passes issued to them by the Bureau of Civil Aviation Authority, Chennai. Thereafter, they were asked to go out. This was done after they had completed their work for the departure of the Singapore Airlines flight. They were kept inside the Manager's cabin from 00.00 hours to 02.00 hours on the night of 4th/5th May, 1998. The workers were during that time asked either to sign on the contract agreeing to work under the contractor or failing which it was said that their services stood terminated. Significantly, Mr. Rosaiah, S/o Mr. Devaiyah employed by the II Party/Management from 1993 who was not one of the workmen involved in the notice was given back his temporary pass issued by the Bureau of Civil Aviation Security, Chennai. Mr. Somu and Mr. Anandaraman did not attend the work on 4-5-98 and hence their passes were not taken. However, when the Petitioner reported for duty on the next day i.e. on 05-05-98 he was denied employment by the II Party/Management. Thus, the Petitioner and similarly placed workmen were terminated from service without any notice and solely with a view to victimise the Petitioner for claiming permanency and other labour welfare benefits to which he is entitled to under the various labour welfare legislations. Immediately thereafter on 5th May, 1998, a lawyer's notice was issued to the Singapore Airlines and various other officials including Mr. Lim Thong Cheng and Mr. Srinivasan objecting to the Petitioner's termination and the termination of service of similarly placed workmen like the Petitioner in the circumstances done and seeking reinstatement with all consequential benefits including permanency and by mentioning that they have committed unfair labour practice. A reply was issued on behalf of the management through their counsel on 19-5-98. In that reply, the termination of the Petitioner and others from service had not been denied. Then the Petitioner raised an industrial dispute under section 2A of the Act before the Assistant Labour Commissioner (Central) Chennai. The impugned termination of the Petitioner from service w.e.f. 5-5-98 is arbitrary, illegal, capricious and whimsical. The Petitioner has been victimised for trying to assert his rights conferred on him under various labour welfare legislations. The action of the Respondent in terminating the Petitioner amounts to retrenchment within the meaning of Section 2(oo) of Industrial Disputes Act, 1947. The Respondent has not complied with the conditions precedent mandated under section 25F of the Act. The action of the Respondent in seeking to introduce contract labour system in a relationship which was hitherto direct amounts to changing the service conditions for which statutory notice under section 9A had not been given. It is an offence as per the provisions of Industrial Disputes Act, 1947. The Respondent/Management is not justified in refusing to confer permanency on the Petitioner and similarly placed workmen even though they had been working continuously for a very long period of time. The action of the Respondent/ Management is in violation of Article 21 of Constitution of India. The last drawn wages of the Petitioner was Rs. 1050/- p.m. The permanent employees of the Respondent/Management in the last grade are being paid Rs. 14,000/-p.m. Hence is, therefore, prayed that this Hon'ble Court may be pleased to pass an award directing the Respondent/Management to reinstate the Petitioner and regularise and absorb him in the services of the Respondent/Management and pay him all past benefits as was paid to the permanent workman with all other consequent benefits including seniority, back wages etc.

3. The averments in the Counter Statement filed by the II Party/Management, Singapore Airlines Ltd. (hereinafter refers to as Respondent) are briefly as follows:—

A Ground Handling Agreement was entered into between M/s. Singapore Airlines and M/s. Air India in the year 1988, which was renewed from time to time. The Annexure B clause 4.2 of the agreement states that M/s. Air India, the handling company shall provide service personnel for handling baggage in the Respondent's aircrafts. Under above agreement, the Respondent is only referred to as the 'Carrier' and Air India as 'Handling Company'. Occasionally, when there are over crowding of passengers or arrival of baggage and if a personnel provided by Air India for handling baggage failed to report in time or absent, the Respondent will engage Casual Labourers purely on temporary basis for clearance of baggage, which will amount to an implied contractual engagement. Neither the Petitioner/Workman nor similarly placed persons

claiming employment with the Respondent has been engaged on regular basis. The Respondent do not maintain any records relating to temporary/casual engagements, since such engagements arise occasionally. Such temporary engagement of Casual Labourers by the Respondent occasionally will not vest any right on the Petitioner/ Workman to claim benefits under Industrial Disputes Act, 1947 alleging contravention of Section 25F and 25N of the said Act. Temporary, contractual engagements of Casual Labourers if at all will only fall within the ambit of Section 2(oo) (bb) of the Industrial Disputes Act, 1947, which is an exception to retrenchment. Hence, the non-employment of the Petitioner/Workman did not amount to retrenchment and he cannot claim any relief from the Respondent/ Management under Industrial Disputes Act, much less retrenchment compensation or re-employment. Inasmuch as, personnel for handling baggage for the aircrafts are provided by Air India, this Respondent/Management is not liable to give employment to the Petitioner. Neither the Petitioner nor similarly placed persons before the authority were engaged in any vacancy or post. There is no vacancy or post available with the Respondent to offer employment to the Petitioner/Workman. The claim of the Petitioner/ Workman is stale barred by laches and as such, the Petitioner is not entitled to seek benefits under Industrial Disputes Act from the Respondent. It is false to contend that the Petitioner joined the services of the Respondent/ Management for doing the work relating to both passenger and cargo transport. The Petitioner was engaged occasionally to handle over crowding of passengers or arrival of baggage. Therefore, it is incorrect to state that he was given duties as a loader to load the baggage in the aircraft and he was asked to work for baggage identification. M/s. Air India who is the handling company provides personnel for handling baggage of the Respondent aircrafts. There is no nexus of employer and employee relationship between the Petitioner and Respondent/Management. The Petitioner cannot maintain the industrial dispute in the absence of any positive proof of employer-employee relationship between him and the Respondent/Management and hence, it is liable to be dismissed in limini. It is denied that the Petitioner had completed 480 days of continuous service in a period of 24 calendar months from the year 1992. It was purely on a temporary basis, casual to meet the exigencies as mentioned earlier which will amount to an implied contract at the best. Hence, such engagement falls within the definition of Section 2(oo)(bb) of Industrial Disputes Act, 1947 and the question of issuance of notice and illegal termination does not arise much less retrenchment. The Petitioner has come forward with his petition alleging non-employment of the Respondent/ Management with an ulterior motive and malafide intention only to harass the Respondent for seeking monetary benefits. The alleged non-compliance of Section 25F and Section 25N of the Industrial Disputes Act, 1947 are all untenable and cannot be sustained. The Petitioner's counsel's notice dated 2-5-98 was suitably answered by the Respondent's counsel's reply dated 19-5-98. The allegations in the Claim Statement about the alleged occurrence on 4-5-98 in the Station Manager's cabin are denied as false. The notice dated 5-5-98 was suitably answered by the reply notice dated 5-6-98 issued through the counsel of the Respondent. The alleged termination of the services of the Petitioner and similarly placed persons does not amount to unfair labour practice. There is no illegal or malafide termination of service of the Petitioner, since he was employed only on a casual basis. The question of violation of Section 9A of the Industrial Disputes Act, 1947 does not arise in the facts and circumstances of the case. Since the Petitioner was engaged on casual basis as and when exigency arose, the question of paying monthly wages does not arise at all. The claims are all ill-founded, misconceived, untenable and consequently, the Petitioner is not entitled to any relief much less reinstatement in service, back wages, continuity of service attendant benefits. Hence, it is prayed that the claim of the Petitioner may be dismissed.

4. When the matter was taken up for enquiry on 17-09-2002, the counsel for the II Party/Management alone was present, neither the I Party nor his counsel on record present. No oral or documentary evidence was let in on either side. After it was reported by the learned counsel for the II Party/Management that they have no oral evidence, the evidence was closed and posted for arguments for the counsel on either side. After the case has been adjourned twice for advancing the arguments of learned counsel on either side and was taken finally on 10-10-2002, the counsel who appeared for the II Party/Management had advanced his arguments and as the counsel for the I Party was not present to advance his arguments, it was held as no arguments for I Party and it was reserved for orders.

5. The point for my consideration is—

"Whether the action of the management of M/s. Singapore Airlines Ltd., Chennai, in terminating the service of the workman Sri T. Logonathan from 05-05-98 is justified or not? If not justified, to what relief the workman is entitled?"

Point : —

It is the case of the Petitioner that he joined the services of the Singapore Airlines Ltd. for doing the work relating to both passenger and cargo transport and he was illegally denied employment w.e.f. 05-05-98 and that he has been employed continuously for more than 480 days within a period of 24 calendar months and that he was not paid retrenchment compensation and he was not given any notice in writing or wages in lieu of notice and hence such termination is bad for non-compliance of Section 25F of Industrial Disputes Act. The Respondent/Management would contend that a ground handling agreement was

entered into between the Respondent and the Air India in the year 1988 which was renewed from time to time and that M/s. Air India, the Handling Company shall provide service personnel for handling baggage in the Respondent's Aircraft and that occasionally when there are over crowding of passengers or arrival of baggage and if personnel provided by the Air India for handling baggage failed to report in time or absent, the Respondent will engage Casual Labourers purely on temporary basis for clearance of baggage which would amount to an implied contractual engagement and hence, the workman like Petitioner have never been engaged on a regular basis and such temporary engagement of Casual Labourers by the Respondent occasionally will not vest any right on the Petitioner/ Workman to claim benefits under Industrial Disputes Act alleging contravention of Section 25F of Industrial Disputes Act. It is further alleged that the non-employment of the Petitioner/Workman did not amount to retrenchment and he cannot claim any relief from the management under the Industrial Disputes Act much less retrenchment compensation or re-employment. It is also alleged by the Respondent/Management that the temporary contractual agreement for Casual Labourers if at all will only fall within the ambit of Section 2(oo)(bb) of the Industrial Disputes Act, 1947 which is an exception to retrenchment. Hence the Petitioner cannot claim any relief from the Respondent/ Management much less retrenchment compensation or re-employment. In support of the contention of the Respondent/Management in their Counter Statement, a xerox copy of the ground handling agreement entered into between the Singapore Airlines and Air India has been filed into Court, after furnishing a copy of the same to other side. It is not disputed on the side of the Petitioner. The Petitioner has not chosen to let in oral or documentary evidence in support of his contention in the Claim Statement. Except raising a plea in the Claim Statement that a notice was sent through his counsel to the Respondent/ Management and a reply has been received for the same from the counsel for the Respondent/Management, no evidence either oral or documentary has been let in, in support of that version. Apart from that there is absolutely no oral or documentary evidence on the side of the Petitioner/Workman- to prove his alleged continuous service directly under the Respondent/Management. As per the contention of the Respondent/Management, no evidence worth considering has been let in by the Petitioner to show that there was employer-employee relationship existed between the Respondent/Management and the Petitioner/Workman. In the Claim Statement also, the Petitioner has not given any particulars about the days he worked under Respondent/Management in respect of the work relating to both passenger and cargo transport and on other capacities as a workman. He has simply stated in his Claim Statement that he. has been employed continuously without any break for more than 480 days within a period of 24 calendar months. For his averment in the Claim Statement that he attended the work mentioned in the Claim Statement and that he worked continuously without any break for more than 480 days within a period of 24 calendar months, he has not produced any substantial evidence . It is the specific contention of the Respondent in the Counter Statement that the persons like the Petitioner were engaged by the Respondent, Singapore Airlines Ltd. as Casual Labourers purely on temporary basis for clearance of baggage as and when occasion arises and that the Respondent/Management used to engage Casual Labourers on daily wage basis at the time of heavy arrivals and departures of flights and such employment they used to make on temporary basis and they never used to engage them continuously for a period of 240 days in 12 calendar months. So from these contentions of either parties, it can be said that the allegation of the Petitioner that he had worked for more than 480 days continuously within a period of 24 calendar months is not correct. When the Petitioner has raised this claim to avail the relief prayed for in the claim petition from the Respondent/Management, he has to prove his plea in the Claim Statement with acceptable legal evidence that he had been employed continuously without any break for more than 480 days within a period of 24 calendar months. Thus, the Petitioner/Workman has not discharged his burden, though the onus is on him to prove that he had worked 480 days continuously in a period of 24 calendar months. The Respondent in their Counter Statement has stated that the Respondent/Management emphatically denies that the Petitioner has completed 240 days of continuous service in a period of 12 calendar months. The learned counsel for the Respondent had also argued that the Petitioner has failed to prove with acceptable legal evidence that he had worked for 240 days in a period of 12 calendar months/480 days continuously for a period of 24 calendar months. Hence, he cannot ask for the relief of reinstatement into service as that of a permanent workman. He had also relied upon a decision of Supreme Court reported as 2002 FACTORIES JOURNAL REPORT Vol.100 pg.397 between RANGE FOREST OFFICER and S.T.HADIMANI. In that case the Supreme Court has held that "since the claim of the workman that he had worked for 240 days was denied by the Management, it is for the workman to lead evidence to show that he had in fact, worked for 240 days and that in the absence of proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for that period, it cannot be concluded that the workman had in fact, worked for 240 days and the onus is on the workman to prove the claim with sufficient records and mere an affidavit is not sufficient." The decision of the Supreme Court in this case is quite applicable to the present case also. It is further argued by the learned counsel for the Respondent that the averment in the Counter Statement of the Respondent to that effect that the Respondent/Management had entered into ground handling agreement with Air India and in pursuance of the same, Air India has taken care of the

ground handling work, which the Petitioner was said to have attended the work relating to both passenger and cargo transport, and the same has not been denied by the Petitioner. Though the period of work alleged by the Petitioner in his Claim Statement has been emphatically denied in the Counter Statement of the Respondent/ Management, the Petitioner has not chosen to prove his alleged period of service with acceptable legal oral or documentary evidence. It is further argued by the learned counsel for the Respondent that the people like the Petitioner/Workman have been engaged as a casual employees at the time of exigencies to meet the requirement or personnel for handling baggage for aircrafts during the period of over crowding of passengers or arrival of baggage and the personnel provided by Air India for that work failed to report in time or remains absent. This has not been disputed by the Petitioner as incorrect or false. The learned counsel would further contend that such casual employment would amount to only implied contractual agreement, which squarely comes under Section 2(oo)(bb) of Industrial Disputes Act, 1947 which is an exception to retrenchment and hence there was no retrenchment in the case of the Petitioner's non-employment and he cannot claim any relief from the Respondent/Management under the Industrial Disputes Act, 1947 and that he cannot claim retrenchment compensation or re-employment. He would further argue that mere pleadings of the Petitioner in his Claim Statement that he was employed under the Respondent/Management for a particular period is not suffice and as per the decision of Madras High Court in a case reported as 2001 4 LLN 903 the Petitioner has to prove the pleadings by letting sufficient evidence. In the above cited case, the Hon'ble High Court of Madras has held that "the allegation which was not pleaded and even if evidence is adduced in that regard cannot be examined because the other side had no notice of it and if such evidence is entertained it would tantamount to granting unfair advantage to the party who had not pleaded his case properly". So from this, it is seen that argument advanced by the learned counsel for the Respondent/Management can be accepted as correct as there is no evidence to show in this case, on the side of the Petitioner, that he has been employed under the Respondent/Management Singapore Airlines and was in continuous employment for more than 480 days in a period of 24 calendar months. So, from all these things, it is seen that the Petitioner cannot ask for reinstatement in service. From the available evidence, it is seen that the Petitioner was engaged only as a casual workman by the Respondent/ Management as and when occasion arises. So by the very nature of the employment of the Petitioner, he has no assurance that he would be employed by the Respondent/Management for any specified duration. The persons like Petitioner temporary employment could not be for any period for which they can look forward to assured work from the employer. It is held by the High Court of Madras in a case reported as 2001 3 LLN 807 between L & T McNEIL LTD. MADRAS and PRESIDING OFFICER, MADRAS LABOUR COURT AND ANOTHER that "casual workmen have only to report each day and hope that employment would be provided to them on that day. Their not going to the place of employer will not result in any penalty as they are not assured of work daily. This kind of employment, therefore, cannot be treated on par with the temporary and permanent employment. The employers are not bound to provide work to casual workmen unless they choose to and there is work for the day. Directing reinstatement of casual workman who had worked as such for a relatively short period of time, would only mean that their names would once again be included in the list of casual workmen putting them in the same position they were earlier, where they would only report for the employment with the hope being providing with the work and no more." This observation of the High Court of Madras in the above cited case is applicable to the facts of this case also.

6. The learned counsel for the Respondent/Management had argued that the Petitioner has not at all pleaded in the Claim Statement that prior to the termination he had worked for 240 days continuously but it is his plea that he had worked 480 days in 24 calendar months and the same also has not been proved and that the Petitioner is not entitled for any permanent employment. Since he was engaged only as a casual worker as and when required due to the exigencies, the question of termination does not arise and hence they are not entitled to the relief of reinstatement also as a permanent employee of the Respondent/ Management.

7. On the basis of the available materials in this case, the argument, advanced by the learned counsel for the Respondent/Management can be accepted as correct. Under such circumstances, it can be concluded that there is no question of termination of the service of the Petitioner by the Respondent/Management and the non-employment of the Petitioner does not amount to any retrenchment. Hence, it can be concluded that the non-employment of the Petitioner/Workman Sri T. Loganathan by the Respondent/Management, Singapore Airlines Ltd., Chennai is justified and hence the concerned workman is not entitled to any relief. Thus, the point is answered accordingly.

8. In the result, an Award is passed holding that the I Party/Workman Sri T. Loganathan is not entitled for any relief. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 20th November, 2002.)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined :—

On either side : None

Exhibits marked:—

On either side : Nil

नई दिल्ली, 11 दिसम्बर, 2002

का. आ. 41.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ओ. एन. जी. सी. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट [संदर्भ संख्या 38/2002 (दिल्ली सं./129/90)] को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-12-2002 को प्राप्त हुआ था।

[सं. एल-30012/23/87-डी. III (बी)/आई. आर. (सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 11th December, 2002

S.O. 41.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award [Ref. No. 38/2002 (Delhi No. 129/90)] of the Central Government Industrial Tribunal, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ONGC and their workman, which was received by the Central Government on 9-12-2002.

[No. L-30012/23/87-D III (B)/IR (C. I)]

S. S. GUPTA, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT

RUDRESH KUMAR
PRESIDING OFFICER

I.D. No. 38/2002 (Delhi No. 129/90)
Ref. No. L-30012/23/87-D.III(B) Dated: 25.10.90

BETWEEN

Shri Kultar singh, S/o Ronkar Ram Rana, 53, Vijay Colony, Hathibarkala, Dehradun-248001

AND

The Chairman, O. N. G. C., Tel Bhawan, Dehradun-248003

AWARD

By order No. L-30012/23/87-D.III(B) dated: 25-10-90, the Central Government in the Ministry of Labour, in exercise of powers conferred by clause (d) of Sub-section (1) and Section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Kultar Singh, S/o Ronkar Ram Rana, 53, Vijay Colony, Hathibarkala, Dehradun-248001 and The Chairman, O.N.G.C., Tel Bhawan, Dehradun-248003 for adjudication. Initially, adjudication was going in C.G.I.T, New Delhi between inferred to this Tribunal.

The reference under adjudication is as under:

"WHETHER THE ACTION OF THE MANAGEMENT OF O.N.G.C., DEHRADUN IN TERMINATING THE SERVICES OF SHRI KULTAR SINGH, CONTINGENT WORKER IS JUSTIFED? IF NOT, WHAT RELIEF IS THE WORKMAN ENTITLED TO?"

2. The fact giving rise to this industrial dispute is, that the workman, Kultar Singh, was engaged as 'contingent worker' to work as a guard, with the management of Oil & Natural Gas commission, Dehradun, in short, to be referred ONGC. He was engaged for various spells i.e. from 1-3-83 to 30-5-83, 1-1-84 to 28-1-84, 22-4-84 to 22-7-84, 1-1-85 to 7-7-85, 13-2-85 to 14-11-85, 6-9-86 to 13-10-86 and 1-11-86 to 29-1-87. It is stated by the workman that he worked continuously and was not even permitted to avail Casual Leave and Festival Leave etc. He worked for 278 days in the year 1985-86 and 126 days in between to 6-9-86 to 21-1-87. He worked for 188 days continuously in consecutive period of six months within twelve calendar months i.e. 1-1-85 to 7-7-85 and so, was temporary 'contingent employer entitled to regularisation' as per order 14 of the Certified Standing Orders (To be referred as CSOs herein after). Otherwise too he worked for more than 240 days to make him eligible to regularistion The management terminated his services without observing prescribed procedures as per order 14 of the Certified Standing Orders followed in the ONGC.

3. The management has denied relationship of master and servant and further, it had disputed his working period.

4. The management has not disputed engagement of the workman in between 1982-1987 but has denied that his engagement did not create any right in his favour.

5. The reference order is very specific, stating status of the workman as "Contingent Worker". Section 2 of the Certified Standing Orders classifies "Contingent Workmen" in the ONGC as follow:—

2. (i) Classification of workmen: The contingent employees of the Commission shall hereafter be classified:—

(a) Temporary; and

(b) Casual.

(ii) A workman who has been on the rolls of the Commission and has put in not less than 180 days of attendance in any period of

12 consecutive months shall be a temporary workman, provided that a temporary, workman who has put in not less than 240 days and who possesses the minimum qualification prescribed by the commission may be considered for conversion as regular employee.

(iii) A workman who is neither temporary nor regular shall be considered as causal workman.

6. It is clear from the above order, that a workman on putting in not less than 180 days of attendance in any period of 12 consecutive months, and those having completed 240 days or more and possessing minimum qualification prescribed by the ONGC, were entitled to be considered for conversion as regular employee. Order no. 2 of the CSOs does not require 240 days working in twelve months or one year like Section 25-B of the Industrial Disputes Act, 1947. The period of 240 days or more should be actual working days in a year or number of years, to make a workman, eligible to be considered for conversion as regular employee. Sub-para (iii) categories casual workman those who are neither temporary nor regular. Admitted case is that the workman had worked for 188 days in six consecutive moths from 1-1-85 to 7-7-85. This fact is admitted in para 2 of the Written Statement. This fact is also corroborated by the certificate dated 18-11-85, issued by M.S. Rana, Administrative Officer ONGC. The management had not lead any evidence to rebut this fact by showing attendance register that the workman had not put attendance for 180 days or more. In fact, the management, despite demand failed to produce this register on convenient plea of not being available. The onus is on the management to show that certificate was wrong or averments in para 2 of the Written Statement are based on incorrect facts. The working period of 188 days is within any period of twelve consecutive months satisfies requirement of order 2 of the CSOs. Further, admitted working period of the workman had been more than 240 days as per order 2 of the CSOs and on this account also he acquired status of temporary contingent employee as required under Order 2 (ii) of the CSOs and acquired a right of conversion as regular employee.

7. The Certified Standing Orders were notified and these orders are law for purposes of regulating service conditions of 'contingent workmen,' like the present workman. These Certified Standing Orders takes care of the provisions of the Industrial Disputes Act, 1947 and specifically provide aid of this Act, whenever necessary. The case of the workman is covered by the Certified Standing Orders for contingent employees. The aid of Industrial Disputes Act, 1947 may be taken when the CSOs is silent.

8. Order No. 14 of the CSOs prescribes mode of termination of services of contingent employee, as follow :

14. Termination of employment: (i) For terminating the employment of a workman, notice in writing shall be given in accordance with the provisions of the Industrial Disputes Act, 1947, provided that were a temporary workman is not entitled to one month's notice under the Industrial Disputes Act, he shall be given at least 7 days notice for termination of employment. Alternatively, wages shall be paid in lieu of notice.

(ii) The services of a workman shall not be terminated as a punishment unless he has been given an opportunity of explaining the charge of misconduct alleged against him in the manner prescribed in clause 16.

(iii) Where the employment of any workman is terminated, the wages earned by him and other dues, if any, shall be paid before the expiry of the second working day from the day on which his employment is terminated.

9. The order No. 14 (i) casts obligation on the ONGC management to issue notice in accordance the provisions of the Industrial Disputes Act, 1947. It also provides 7 days notice mandatory in case one month notice is not necessary. The management conceded that compliance of this order was not made. It has based its case on the definition of 'continuous service' as defined under Section 25-B of the Industrial Disputes Act, 1947. It has been held earlier that the provisions of Industrial Disputes Act, 1947 may apply if the CSOs are silent. The mode of termination is specifically provided and the management had no escape but to have followed it.

10. Thus, the action of the management in terminating the services of Kultar Singh, contingent employee, is *void-ab-initio*. The workman is entitled to reinstatement with full back wages and all other service benefits, treating the order of termination non-est.

11. Award as above.

LUCKNOW

28-11-2002

RUDRESH KUMAR, Presiding Officer

नई दिल्ली, 13 दिसम्बर, 2002

का. आ. 42.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. को. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों

के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-I, धनबाद के पंचाट [संदर्भ संख्या 31 का 95] को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-12-2002 को प्राप्त हुआ था।

[सं. एल-20012/127/94-आई. आर. (सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 13th December, 2002

S. O. 42.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award [Ref. No. 31 of 95] of the Central Government Industrial Tribunal-I Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 9-12-2002.

[No. L-20012/127/94 I-R. (C. I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-NO. I
DHANBAD

In the matter of a reference under Sec. 10 (1) (d) (2A) of the Industrial Disputes Act, 1947.

Reference No. 31 of 1995

Parties: Employers in relationl to the management of South Jharia Colliery of M/S. B. C. C. Ltd.

AND

Their workman

PRESENT: : Shri H. S, KAZMI, Presiding officer

APPEARANCES:

For the Employers : Shri S. N. Sinha, Advocate.

For the Workman : Shri S. Bose, Treasurer, Rashtriya Colliery Mazdoor Sangh.

State : Jharkhand Industry : Coal.

Dated, the 27th November, 2002

AWARD

By Order No. L-20012(127)/94-I.R. (Coal-I) dated 29-3-1995 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

"Whether the action of the management of ROCP/South Jharia Colliery under Kustore Area No. VIII of BCCL in denial of wages to Smt. Ch. Bandia Bhuini, Wagon loader from July, 1990 to 13-4-93 is justified ? If not, to what relief she is entitled and from which date ?"

2. The case of the sponsoring union, in short, is that the concerned lady who has now been retired was a permanent workman engaged as wagon loader under the management of ROCP/South Jharia Colliery. It has been said that in the month of July, 1990 the local officers of the management stopped her from duty alleging that she had reached the age of 60 years, which is the age of superannuation under the management. Thereafter it is said that the workman herself as well as the union protested on the ground that she was much younger and could not have been retired then. Upon that, it is said, the managements did relent and the concerned lady was referred for Midical Board of the company and after due test the Medical Board declared the age of the concerned lady to be 45 years as on 19-2-93 and thereafter the management allowed her to resume duty on 14-4-93. Further the case is that due to wrong action on the part of the management, the concerned lady had to remain idle from July, 1990 till 13-4-93 for no fault on her part. Further, it has been said that the concerned lady has not been paid pay and allowances for the period of the enforced idleness i.e. from July, 1990 to 13-4-93 and the management refused to pay her for the reasons best Known to them. Subsequent to that, it is said, the sponsoring union raised an Industrial dispute before the A.L.C. (C) Dhanbad but the conciliation proceeding failed due to adamant Attitude on the part of the management and ultimately the dispute was referred to this Tribunal for adjudication. Lastly, it has been said that the management is liable to pay to the concerned lady her full wages and allowances from July, 1990 to 13-4-93.

The management's case, on the other hand, is that the concerned lady was appointed on 17-10-71 and she declared her year of birth as 1930 and accordingly the same was recorded in Form 'B' register of the company. She was issued Identity Card in the year 1974 in which she was described as casual wagon loader and the date of her birth was shown as 1930. It has been said that in the year 1987 the concerned lady was issued with service excerpt in which her date of birth was shown as 1930 but the said lady did not challenge the correctness of the same and returned the service excerpt. It has further been said that as per the provisions of Certified Standing Order of the company as well as JBCCI Circular No. 76 the concerned lady was to be superannuated from service w.e.f. 1-7-1990 and accordingly she was superannuated. Further the case is that the date of birth recorded in Form 'B' Register, Identity Card and service excerpt becomes conclusive and binding for determination of date of superannuation and a workman has no right to

challenge the correctness of the entries made in the company's record. It has been said that after superannuation of the concerned workman the sponsoring union raised the dispute that from the appearance of the concerned lady she has not reached the age of 60 years and she should be given chance to appear before the Apex Medical Board for assessment of age and in case her age is assessed below 60 years she should be given employment under the management. Thereupon it is said that the Director (Personnel) of the company showed his good gesture to help the concerned lady on the insistance of the sponsoring union and allowed her to appear before the Medical Board which finally assessed her age as 45 years as on 19-2-1953 and accordingly the concerned lady was allowed to resume her duty on 14-4-93 provisionally as it was suspected that she was not the genuine worker and she could have surruptitiously entered into the services of the company. Letters were issued to the Government authorities including the Supdt. of Police but insphe of that no report came from any source and the matter remained hanging. However, it has been said that the management acted bona fide in manner for helping the concerned lady and the sponsoring union cannot demand wages for the period of idleness from July, 1990 to 13-4-93 as the fault lies with the concerned lady who declared her year of birth as 1930. It has been said that the concerned lady is not entitled for wages for the concerned period.

3. Both sides filed their respective rejoinders to the written statement in which also after denying or controverting the claim of each other they reiterated their stands already taken in their written statement.

4. As it is apparent the only question falls for consideration is whether the concerned lady can at all be taken to be entitled for the wages for the aforesaid idle period.

5. As it seen above the management's definite stand is that not only in Form 'B' Register, rather in few other relevant documents also the year of birth of the concerned lady has been shown as 1930 and so in accordance with that if she was superannuated w.e.f. 1-7-90 there was nothing wrong on the part of the management and merely on account of the fact that a subsequent stage she was found to be below the age of 60 years by the Medical Board, the concerned lady cannot claim her wages for the said idle period. In support of such stand being taken few documents have also been filed and exhibited which are Exts. M-1 to M-5. Out of those documents particularly the reliance has been placed upon Ext. M-3 which is a photo copy of Form 'B' Register and Ext. M-4 which is the photo copy of service excerpt which was issued to the concerned lady in the year 1987. In both these documents her date of year of birth has been described as 1930. It has not been denied that pursuant to the Service Excerpt in the year 1987 the concerned lady did not furnish or raise any objection so far her date of birth is concerned. But the contention raised on behalf of the said lady is that being a rustic and illiterate she was not knowing as to what was written in Form 'B' Register and simply she put down her thumb impression and similarly when the service excerpt was issued to her she was not knowing as to in what way her age or date of birth has been mention and simply on that also she put down her thumb impression and returned the same to the management. Further the contention is that had the lady been knowing about the wrong entry of her date of birth or implication which would have arisen out of that, certainly she would have raised objection or grievance before the management immediately. As per the submission it is only when the union espoused her cause and raised the dispute she was referred to Medical Board for assessment of her age and finally after the finding of the Medical Board it became apparent that she was wrongly superannuated w.e.f. 1-7-90. Despite all these submission made on behalf of the workman the fact remains that in all the aforesaid relevant documents the year of birth of the concerned lady was shown as 1930 irrespective of the fact whether the same was within her knowledge or not or whether she being a rustic and illiterate lady was knowing about the contents of those documents or not. Therefore, if she was superannuated w.e.f. 1-7-90 in accordance with the entries in the service record, prima facie, theredoes not appear to be anything wrong done by the management. But development made thereafter also bears much significance and is also required to be taken into consideration for coming to any conclusion in respect of the grant of relief to the concerned lady.

It is an admitted fact that when the concerned lady was superannuated she protested and the sponsoring union raised dispute on her behalf with the plea that she was much below the age of 60 years which can be verified even from her appearance and so she was wrongly superannuated and the management should reinstate her in service after getting her age assessed by the Apex Medical Board, for its own satisfaction. Further, it is not denied that the management agreed to such demand being made and referred her for medical examination before the Medical Board whereafter she was examined and was found to be 45 years of age as on 19-2-93. Subsequent to that admittedly she was allowed to resume her duty w.e.f. 14-4-93. The question is as to why the management conceded to be aforesaid demand of the union or the said lady and agreed to refer her to the Medical Board when its firm and defenite stand was that as per the service record the said lady was rightly superannuated w.e.f. 1-7-90. It cannot be accepted, as suggested on its behalf, that just on account of the insistance of the union or taking compassionate view in the matter the concerned lady was shown favour by referring her to Apex Medical Board for assessment of her age. A large organisation like M/s. BCCL cannot expected to conduct itself or to function just on the pressure or insistence of some one, leaving aside rules, norms and procedures which are framed for its effective functioning or governence. It can be reasonably believed

that when the concerned lady would have objected to her mature superannuation and the union would have raised the dispute on her behalf before the management, the competent authorities of the management particularly after seeing the physical appearance of the concemed lady must have also realised that her superannuation was pre-matured and her date of birth as mentioned in the relevant record was incorrectly mentioned. When the management agreed to refer the said lady to the Medical Board then it was to abide by its finding and that is why when she was found to be just 45 years as on 19-2-93, by way of issuance of a letter, she was asked to resume her duty. When the management agreed and made the aforesaid consideration even on compassionate ground as suggested then it would have been proper on its part to make consideration in respect of payment of wages also to her of the aforesaid idle period as by then it had been conclusively found on the basis of Apex Medical Board's finding that in fact she had not reached the age superannuation on the date on which she was made to retire. It is true that the year of birth of the concerned lady was mentioned in the service record as 1930 and on that basis she was superannuated. But at the same time as from her very appearance she looked younger and as she was undisputedly was rustic and illeterate lady, at the time of her superannuation itself, particularly when the lady had made the protest, the management should have made the consideration and should have referred her to Medical Board for verification of her actual age, of course it should not have waited for the union to intervene and aspouse the cause of the concerned lady. Not just the aforesaid, rather even when the age of the concerned lady was assessed by the Apex Medical Board on 19-2-93 itself, a letter was issued asking her to resume her duty only on 8-4-93 and there is no explanation whatsoever as to why such delay was caused and why she was not asked to resume her duty immediately after 19-2-93. Therefore, in my view, the management is not totally absolved from responsibility and liability of paying the wages to the concerned lady for the aforesaid period of her idleness.

Considering the circumstances, thus, I am of the view that the interest of justice would be served if the concerned lady is allowed 50% of her wages and allowance for the aforesaid period i.e. between 2-7-90 to 13-4-93.

As far as alleged ground of impersonation is concerned neither the same was emphatically pressed nor the same was substantiated and it was put forward on behalf of the management in course of argument that though the management had initiated the matter in the year 1994 but till date there is no development in that regard. Further, as admitted by both the sides pursuant to the voluntary retirement of the concerned lady her dependent has already been provided he employment as per company's rule.

6. The award is, thus, rendered as hereunder :

The action of the management of ROCP/South Jharia Colliery under Kustore Area No. VIII of BCCL in denial of wages to the concerned lady. Ch. Bandia Bhuini, Wagon Loader from July, 1990 to 13-4-1993 is not justified and in the circumstances of this case she deserves 50% of her wages for the aforesaid period. Consequently, the management is hereby directed to make payment of 50% of wages to the concerned lady, who has now been retired voluntarily from the service, for the period between 2-7-1990 to 13-4-1993 within 30 days from the date of publication of this award.

However, there would be no order as to cost.

S. H. KAZMI, Presiding Officer

नई दिल्ली, 13 दिसम्बर, 2002

का. आ. 43.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एम. ए. एम. सी. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 77/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-12-02 को प्राप्त हुआ था।

[सं. एल-20012/133/96-आई.आर. (सी-I)]

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 13th December, 2002

S.O. 43.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 77/97) of the Central Government Industrial Tribunal II Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of MAMC Ltd. and their workman, which was received by the Central Government on 11-12-02.

[No. L-20012/133/96-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT

Shri B. Biswas, Presiding Officer

In the matter of an industrial dispute under Section 10(1)(d) of the I. D. Act, 1947

REFERENCE NO. 77 OF 1997

PARTIES:

Employers in relation to the management of M/s. Mining and Allied Mechinery Co. Ltd. and their workman.

APPEARANCES :

On behalf of the workman : None.

On behalf of the employers : None.

Industry : Coal

State : Jharkhand

Dated, Dhanbad the 26th November, 2002

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10 (1) (d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/133/96-I.R. (Coal-I) dated, the 26th June, 1997.

SCHEDULE

"Whether the demand of the Union for the retention of the services of S/Shri Gulzar Ansari and 31 others (as per list enclosed) by the main contractor M/s. MAMC Ltd. of Madhuban Washery Project till the handling over of the project to M/s. BCCL is justified If so, to what relief are the concerned workmen entitled ?"

2. The case of the concerned workman according to W. S. submitted by the sponsoring Union on their behalf is as follows. :—

The sponsoring Union in their written statement submitted that the management engaged M/s. Mining Allied Machinery Co. Ltd. for construction, operation of Madhuban Coal Washery under them and to perform the said job all the concerned workmen were employed by the said contractor. They submitted that since 1990 the concerned workmen working in the said project and performed duties more than 240 days in each calendar year but inspite of getting knowledge of this fact by the management they never took any step for payment of proper wages according to job performed by them. On the contrary after completion of the said project the management terminated the contract with M/s. Mining Allied Machineries Ltd. lest they face obligation to give employment of those workers. As a result the sponsoring union raised an industrial dispute for conciliation which ultimately resulted reference to this Tribunal for Award.

3. Management on the contrary after filing W.S.-cum-rejoinder have denied all the claims and allegations which the sponsoring Union asserted in the written statement on behalf of the concerned workmen. They submitted that the dispute in question is a dispute in between the management of MAMC and the concerned workmen as they engaged those workmen for construction of Madhuban Coal Washery as per contract entered in between them and the M.A.M.C. They disclosed that the concerned workmen expressly have made it clear that they were the workmen of M.A.M.C. Ltd. which is an important undertaking registered under the Company's Act carrying on contract jobs for construction of washeries and buildings at different parts of the country besides carrying on contract jobs for installation of machineries and plants. Accordingly they do not have any connection in the matter of selection, recruitment of the workmen or in the matter of payment of wages to them. They also did not have any concern in distributing work to them, exercising supervision and control over them or taking disciplinary action against them. Disclosing all these facts management submitted that as the concerned workmen are the workmen of the contractor i.e. M.A.M.C. Ltd. they did not have any manner of obligation to regularise the services of the concerned workmen as their employees. They alleged that the sponsoring union have raised a vexatious dispute without any basis in order to harass the management. Accordingly, management submitted their prayer to pass Award rejecting the claim of the concerned workmen.

4. The points to be decided in this reference are :—

"Whether the demand of the Union for the retention of the services of S/Shri Gulzar Ansari and 31 others (as per list enclosed) by the main contractor M/s. MAMC Ltd. of Madhuban Washery Project till the handing over of the project to M/s. BCCL is justified. If so, to what relief are the concerned workmen entitled ?"

DECISION WITH REASONS

5. It is seen from the record that though the respective parties have filed their W.S. and rejoinders did not consider necessary to adduce any evidence documentary or orally in order to substantiate their claim and counter claim. Accordingly on the basis of pleadings of both sides let us consider if the claim of the sponsoring union has any merit or not to pass award in their favour.

6. It is admitted fact that the concerned workmen were the workmen of the contractor i.e. MAMC Ltd. who were engaged by them for construction, operation of Madhuban Washery of M/s. BCCL. It is the allegation of the sponsoring union that M/s. BCCL terminated the contract with MAMC Ltd. where the concerned workmen were very much in employment lest the management of BCCL comes under any obligation to regularise their services. They disclosed that the concerned workmen had been engaged in employment at Madhuban Coal Washery since 1990 and during this period they performed jobs for more than 240 days in each calendar year. Disclosing this fact they submitted that such termination of contract was not only illegal, arbitrary but also against the principle of natural justice.

7. Considering the submission of the sponsoring union the management submitted that the concerned workmen were the workmen of the M.A.M.C. Ltd. and for which there is no scope to say that they were their

employees. They submitted that M.A.M.C. Ltd. which is an important undertaking registered under the Company's Act carrying on contract jobs of construction of washeries buildings at different jobs for installation of machineries and plants. The said company employs their own workmen, pay their wages, exercise control over them and terminates or retrenches their workmen and for which they did not have any manner of obligation for employment of the concerned workmen or to pay wages to them.

8. Considering the submission of both sides as per pleadings I find no dispute to hold that the management legally entered into a contract with M.A.M.C. Ltd. for construction of Madhuban Coal Washery and for construction of the same the said contractor engaged the workmen who worked under their control and management. Therefore, it is clear that the concerned workmen were the workmen of MAMC Ltd. and not of the management. It is the allegation of the sponsoring union that the management terminated the contract with the contractor i.e. M.A.M.C. Ltd. lest the management comes under any obligation to regularise the services of the workmen. The construction of the said Coal Washery was taken up by M.A.M.C. Ltd. in view of contract entered into between them and the management of B.C.C. Ltd. Naturally if the said contract is rescinded illegally, the parties to the contract are legally eligible to raise any dispute and not the workmen themselves. Here no evidence is forthcoming if the M.A.M.C. Ltd. raised any dispute over termination of the contract in question. Accordingly onus is on the sponsoring union to establish what obligation the management of B.C.C.L had to regularise the services of the concerned workmen. No evidence is forthcoming to show that master and servant relationship grew in between the concerned workmen and the management in course of the contractual work in question. It is now settled principle of law that contractor's workers cannot be considered as management's workers until and unless it is established that the contractor appointed by the management to undertake any work was a camouflage one.

9. Apart from the facts discussed above it is curious to note that the prayer which the sponsoring union has made on behalf of the concerned workmen bears no conformity with the reference in question. When the subject matter of reference is whether the demand of the union for the retention of the services of the concerned workmen by the main contractor M.A.M.C. Ltd. of the Madhuban Washery Project till the handing over of the Project to BCCL is justified the sponsoring union in their written statement submitted their prayer to pass award to the effect that the demand of the concerned workmen to retain them in their services at Madhuban Coal Washery is proper and justified and they are entitled to be regularised with full back wages.

10. Such prayer of the sponsoring union shows clearly that they did not pray for any relief against M.A.M.C. Ltd. who engaged the concerned workmen for the purpose of construction of Madhuban Coal Washery but have sought for relief against the present management which is contrary to the dispute as per reference. However, the sponsoring union had got enough scope to justify their claim by adducing cogent evidence but I find that inspite of getting ample scope they did not consider necessary to do so.

Accordingly after careful consideration of all the facts and circumstances I find no hesitation to say that the sponsoring Union has lamentably failed to establish their claim.

In the result, the following award is rendered :—

"The demand of the Union for the retention of the services of S/Shri Gulzar Ansari and 31 others (as per list enclosed) by the main contractor M/s. MAMC Ltd. of Madhuband Washery Project till the handling over of the project to M/s. BCCL is not justified. Consequently, the concerned workmen are not entitled to get any relief."

B. BISWAS, Presiding Officer

नई दिल्ली, 13 दिसम्बर, 2002

का. आ. 44.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. को. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 110/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-12-2002 को प्राप्त हुआ था।

[सं. एल-20012/191/2000-आई.आर. (सी-I)]

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 13th December, 2002

S.O. 44.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 110/2000) of the Central Government Industrial Tribunal II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of B. C. C. L. and their workman, which was received by the Central Government on 11-12-2002.

[No. L-20012/191/2000-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

Shri B. BISWAS, Presiding Officer

In the matter of an industrial dispute under Section 10(1)(d) of the I. D. Act, 1947

Reference No. 110 of 2000

PARTIES:

Employers in relation to the management of Tetulmari Colliery of M/s. B. C. C. L. and their workman

APPEARANCES:

On behalf of the workman : Authorised Representative.

On behalf of the employers : Shri H. Nath, Advocate.

State : Jharkhand Industry : Coal.

Dhanbad, Dated, the 26th November, 2002

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10 (1) (d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/191/2000-IR (C-I) dated. the 29th September, 2000.

SCHEDULE

"Whether the action of the management of Tetulmari Colliery of M/s. BCCL in not promoting Sri Basant Nonia as Fitter in Cat. "D" is justified? If not, to what relief is the concerned workman entitled and from what date?"

2. In this reference both the parties appeared but did not file their respective written statment. Subsequently when the case was fixed both the parties appeared and the representative of the workman submitted to pass a 'No dispute' Award as the concerned workman involved in this dispute is not interested to proceed with the instant reference. Learned Advocate for the management raised no objection on the submission of the representative of the concerned workman. Since the concerned workman is not interested to proceed with the instant reference, there is no reason to keep the same alive. Under such circumstances, a 'No dispute' Award is rendered and the reference is disposed of on the basis of 'No dispute' Award presuming non-existence of any industrial dispute between the parties presently.

B. BISWAS, Presiding Officer

नई दिल्ली, 13 दिसम्बर, 2002

का. आ. 45.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैथान कोल कम्पनी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण I, धनबाद के पंचाट (संदर्भ संख्या 27/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-12-2002 को प्राप्त हुआ था।

[सं. एल-20012/234/98-आई.आर. (सी-I)]

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 13th December, 2002

S.O. 45.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 27/99) of the Central Government Industrial Tribunal I, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Maithan Coal Company and their workman, which was received by the Central Government on 11-12-02.

[No. L-20012/234/98-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I AT DHANBAD

In the matter of a reference under sec. 10(1)(d) (2A) of the Industrial Dispute Act, 1947.

Reference No. 27 of 1999

PARTIES: Employers in relation to the management of Maithan Coal Company.

AND

Their Workmen.

PRESENT: Shri S. H. Kazmi, Presiding Officer.

APPEARANCEs:

For the Employers : Shri D. K. Verma, Advocate

For the Workman : None

State : Jharkhand Industry : Coal

Dated, the 29th November, 2002

AWARD

By Order No. L-20012/234/98-IR(C-I) dated 29-1-1999 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Maithan Coal Company, P.O. Nirsha in dismissing the services of Sri Khublal Pandit, Trawleyman is justified ? If not, what relief the workman is entitled to ?"

2. It appears from the record that the present reference was registered in this Tribunal on 11-2-99 and time was granted to the workman/sponsoring union to file written statement. When no such written statement was filed for a long time then on 29-8-2002 notice was issued to the workman for filing written statement but even then no development could take place and then on 13-9-2002 again notice under registered cover was sent, but neither anyone appeared on behalf of the workman on the next date fixed

i.e. 1-11-2002 not the written statement was filed. However, in order to enable the parties to take step one adjournment was again granted. But today (29-11-2002) position remains the same and none has appeared on behalf of the workman for taking necessary step or to file written statement.

Shri D.K. Verma, Advocate, appearing on behalf of the management has filed one petition today alongwith certain enclosures. While pressing the said petition he has submitted that the concerned workman, Kbublal Pandit himself has submitted his resignation from the service of the company on his own accord and, in fact, he was never terminated from his service by the management/company. Further, according to him, after receiving the resignation from the workman concerned, the management prepared legal dues in respect of the concerned workman and thereafter made payment to him. Further, as per his submission the concerned workman had informed the A.L.C. (C), Dhanbad also as regards the submission of his resignation on his own accord. The documents annexed to the aforesaid petition are the documents to show full and final payment of all the settled dues to the concerned workman and in token of the receipt of the same he appears to have put down his signature also on one of the documents.

None is present to dispute or controvert the aforesaid development. The aforesaid development which has been brought to the notice of this Tribunal appears to be correct. Had the said development not taken place the workman or the sponsoring union would have certainly appeared and filed the written statement and would not have left this case unattended. Quite evidently as because the concerned workman has already received all his due pursuant to his resignation from the service of the management, he has lost interest in this case and does not want to pursue the same.

Thus, in view of the facts and circumstances noticed as above there does not appear to be any dispute in existence for being adjudicated. Consequently, this reference is finally disposed of and no any action whatsoever of the management can be held to be unjustified.

Let a copy of this award be sent to the concerned Ministry for further needful.

S.H. KAZMI, Presiding Officer

नई दिल्ली, 13 दिसम्बर, 2002

का. आ. 46.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, II. धनबाद के पंचाट (संदर्भ संख्या 133/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-12-02 को प्राप्त हुआ था।

[सं. एल-20012/235/97-आई.आर (सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 13th December, 2002

S.O. 46.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 133/98) of the Central Government Industrial Tribunal II Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of C. C. L. and their workman, which was received by the Central Government on 11-12-02.

[No. L-20012/235/97-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT: Shri B. BISWAS, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I. D. Act, 1947.

Reference No. 133 of 1998

PARTIES: Employers in relation to the management of Bokaro Colliery of M/s. CCL and their workman.

APPEARANCES:

On behalf of the workmen	:	None.
On behalf of the employee	:	Shri D.K. Verma, Advocate.
State	:	Jharkhand
Industry	:	Coal.

Dated, the 26th November, 2002

ORDER

The Govt of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947, has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/235/97-IR (Coal-I), dated the 22nd April, 1998.

SCHEDULE

"Whether the action of the management of Bokaro Colliery of M/s. C.C.L., P.O. Sunday Bazar, Distt. Bokaro in not giving notional seniority to Sh. M.K. Bhattacherjee in the post of U.D. Clerk Gr. I w.e.f. 12-2-96 is justified? If not, what relief is the workman is entitled?"

2. In this reference neither the concerned workman nor his representative appeared before this Tribunal. However, only the management side made their appearance in it. It is seen from the record that the instant reference was received by this Tribunal on 25-5-98 and since then it is pending for disposal. Registered notices and show cause notices were issued to the workman but inspite of the issuance of notices the workmanside has failed to turn up. In terms of Rule 10B of the I.D. Central Rules, 1957

submission of W.S. by the concerned workman within 15 days is a mandatory one. The concerned workman not only violated the said provision of the Rules but also did not consider necessary to give any response to the notices issued by this Tribunal. In natural course the question which will arise is what will be the fate of the reference made by the Ministry for its disposal. The reference is made on the basis of dispute raised by the concerned workman/union. Naturally responsibility rests with the concerned workman/union to assist the Court to dispose of the reference in issue on merit. In view of the decision reported in 2002 (94) FLR 624 it will not be just and proper to pass 'No dispute' Award when both the parties remain absent. There is also no scope to answer the reference on merit in absence of any W.S. and available documents. There is no dispute to hold that when any reference is made it is expected to be disposed of on merit but when the parties do not take any step or do not consider even to file W.S. such expectation to dispose of the reference on merit comes to an end. It is not expected that for years together the Court will persue the matter suo moto with the expectations for appearance of the workman inspite of issuance of registered notices. As per I.D. Act the workman excepting under provisions of Section 2A is debarred from raising any industrial dispute. The disputes are mainly raised by the Union for their workmen. These unions inspite of receiving notices did not care to appear before the Court for the interest of the workman and as a result they have been deprived of getting any justice until and unless the attitude of the union is changed I consider that this uncalled for situation will persist. Definitely it is the duty of the Court to dispose of the reference on merit but it depends on the cooperation of both sides. Here the record will clearly expose that sufficient opportunities had been given to the workman/union but yielded no result. This attidude shows clearly that the workman side is not interested to proceed with the hearing of the case for disposal on merit.

Under the facts and circumstances, I also do not find any sufficient reason to drag on the case for an indefinitely period. Accordingly as there is not scope to dispose of the reference in question on merit, the same is closed.

B. BISWAS, Presiding Officer

नई दिल्ली, 13 दिसम्बर, 2002

का. आ. 47.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. को. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, II. धनबाद के पंचाट (संदर्भ संख्या 122/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-12-02 को प्राप्त हुआ था।

[सं. एल-20012/252/98-आई.आर. (सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 13th December, 2002

S.O. 47.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 122/1999) of the Central Government Industrial Tribunal II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of B. C. C. L. and their workman, which was received by the Central Government on 11-12-02.

[No. L-20012/252/98-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Present : Shri B. Biswas, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I. D. Act, 1947.

Reference No. 122 of 1999

Parties : Employers in relation to the management of M/s. BCCL and their workman.

APPEARANCES :

On behalf of the workmen	:	None.
On behalf of the employers	:	Shri D.K. Verma, Advocate.
State	:	Jharkhand
Industry	:	Coal.

Dated, the 26th November, 2002

ORDER

The Govt of India, Ministry of Labour, has in exercise of the powers conferred on them under Section No 10(1)(d) of I.D. Act., 1947 referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/252/98-I.R. (C-I), dated the 29th January, 1999.

SCHEDULE

"Whether the demand of the union for regularisation of Smt. Sundra Bourin, tutia Dhoba, Budhwara B.P., Jitnd Brajwarin and Malti Bourin in Time-rated jobs of Cat. I and wages for the idle period from 16-8-96 to 4-11-96 is justified ? If so, to what relief is the workman concerned are entitled?"

2. In this reference neither the concerned workman nor their representative appeared before this Tribunal. However, only the management side made their appearance in it. It is seen from the record that the instant reference was received by this Tribunal on 12-2-99 and since then it is pending for disposal. Registered notices and show cause notices were issued to the workman but inspite of the issuance of notices the workmanside has failed to turn

up. In terms of Rule 10B of the I.D. Central Rules, 1957 submission of W.S. by the concerned workman within 15 days is a mandatory one. The concerned workman not only violated the said provision of the Rules but also did not consider necessary to give any response to the notices issued by this Tribunal. In natural course the question which will arise is what will be the fate of the reference made by the Ministry for its disposal. The reference is made on the basis of dispute raised by the concerned workman/union. Naturally responsibility rests with the concerned workman/union to assist the Court to dispose of the reference in issue on merit. In view of the decision reported in 2002 (94) FLR 624 it will not be just and proper to pass 'No dispute' Award when both the parties remain absent. There is also no scope to answer the reference on merit in absence of any W.S. and available documents. There is no dispute to hold that when any reference is made it is expected to be disposed of on merit but when the parties do not take any step or do not consider even to file W.S. such expectation to dispose of the reference on merit comes to an end. It is not expected that for years together the Court will persue the matter suo moto with the expectations for appearance of the workman inspite of issuance of registered notices. As per I.D. Act the workman excepting under provisions of Section 2A is debarred from raising any industrial dispute. The disputes are mainly raised by the Union for their workmen. These unions inspite of receiving notices did not care to appear before the Court for the interest of the workman and as a result they have been deprived of getting any justice until and unless the attitude of the union is changed I consider that this uncalled for situation will persist. Definitely it is the duty of the Court to dispose of the reference on merit but it depends on the cooperation of both sides. Here the record will clearly expose that sufficient opportunities had been given to the workman/union but yielded no result. This attidude shows clearly that the workman side is not interested to proceed with the hearing of the case for disposal on merit.

Under the facts and circumstances, I also do not find any sufficient reason to drag on the case for an indefinitely period. Accordingly as there is not scope to dispose of the reference in question on merit, the same is closed.

B. BISWAS, Presiding Officer

नई दिल्ली, 13 दिसम्बर, 2002

का. आ. 48.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. को. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण I, धनबाद के पंचाट (संदर्भ संख्या 71/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-12-02 को प्राप्त हुआ था।

[सं. एल-20012/265/95-आई.आर. (सी-I)]

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 13th December, 2002

S.O. 48.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 71/1996) of the Central Government Industrial Tribunal I, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers In relation to the management of B. C. C. L. and their workman, which was received by the Central Government on 11-12-02.

[No. L-20012/265/95-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. I) AT DHANBAD

In the matter of an Industrial Dispute under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947.

Reference No. 71 of 1996

PARTIES: Employers in relation to the management of Gopalichak Colliery of M/s. BCCL.

AND

Their Workmen.

PRESENT: Shri S.H. Kazmi, Presiding Officer.

APPEARANCES:

For the Employers	:	Shri H. Nath, Advocate.
For the Workman	:	Shri S.C. Gour, Advpcate.
State	:	Jharkhand.
Industry	:	Coal

Dated, the 26th November, 2002

AWARD

By Order No. L-20012/265/95-IR(Coal-I) dated 26-9-1996 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

> "Whether the demand by the Union for protection of the wages as per JBCCI instructions at the time of conversion of piece-rate to time-rate of S/Shri Rampat Chauhan, balmukand Pandit, Ramlakhan Pandit and Md. Murteza Ahmed by the management of P.B. Area number VII of M/s. BCCL is justified ? If so, to what relief are these workman entitled?"

2. Precisely, the case of the sponsoring union is that all the four concerned workmen were initially appointed as miner/loader in piece-rated and were paid accordingly. But in the year 1988 they were picked up by the management on time-rated job on clear vacancy. It has been said that

out of the four concerned workmen, Rampat Chauhan, Balmukand Pandit and Ram Lakhan Pandit were picked up by the management on time-rated job as Drillman in January, 1988 and Md. Murtaza Ahmad was engaged as Prop. Mazdoor under Category-III time-rated also from January, 1998. Further the case is that the management instead of paying difference of time-rated from January, 1988 paid them Group wages of miner/loader till June, 1992. It is said that the management did not protect their wages as per JBCCI policy decision and due to their arbitrary decision, the workmen were put to loss. Further Rampat Chauhan, Balmukund Pandit and Ram Lakhan Pandit were fixed in time-rated scale of pay of Rs. 42.18 instead of Rs. 56.05 and as a result the concerned workman had to suffer net loss of Rs. 13.87 per day plus underground allowance. Similarly Md. Murtaza Ahmad was fixed in time-rated scale of pay of Rs. 40.78 as a result of which he suffered loss of Rs. 15.27 per day. Further it is said that in other areas of M/s. BCCL the norms formulated by M/s. BCCL was kept in mind while fixing wages time-rated pay scale after conversion from piece-rate to time-rate. Lastly, it has been said that the demand for protection of wages at the time of coversion in time-rate job is proper and justified and the concerned workmen are entitled to wages and other allowance from January, 1988.

3. The case of the management, on the other hand, as diclosed in its written statement is that all the four concerned workmen were converted from miner/loader piece-rated to time rated job and are getting the wages as per their designation. Futher, it has been said that the concerned workman opted for working In time-rated job and accepted the wages of that category with 80 other workmen of Goplichak colliery who were converted from piece-rated to time-rated job alongwith the concerned workmen in June, 1992 and they all have been given initial basic of category in which they were working as per rules and no one was given protection of wages. It is said that if the concerned workmen are not willing or satisfied with time-rated job, they could have asked for and would have been reverted back to their original job of miner/loader in which they were working before conversion. As per the company's rule, it is said that on compliance of satisfactory period in time-rated job a person can be regularised in time-rated category as per his acceptance. It is also said that all the concerned workmen are getting correct wages of the category in which they are working and no question of protection of wages as per JBCCI arises in their case. It has also been said that the industrial dispute raised by the sponsoring union or the demand raised by it was stale one because of the delay of more than five years in raising the industrial dispute.

In its rejoinder also the management has controverted or denied several averments and allegations made in the written statement of the workmen and reiterated its stand taken in the written statement.

From the side of the union also by way of filing the rejoinder to the management's written statement several allegations and averments were refuted and denied. As regards ground of delay in raising industrial dispute taken by the management it has been said that the same is baseless as after conversion from piece-rated to time-rated in June, 1992 and after discussions to rectify basic failed, industrial dispute was raised in October, 1992 i.e. just after four months.

4. It is obvious from the respective stands taken by the parties, as noticed above, that the only question that requires consideration in the instant case is as to whether the concerned workmen deserved pay protection at the time of their conversion from piece-rated to time-rated workman as per the norms and policy of JBCCI.

5. In support of their respective stands both the sides have led their oral as well documentary evidence which would be taken note of and considered in course of discussions made hereinafter.

6. As it is evident, the definite stand of the workman is that after their conversion from piece-rated to time-rated job they were fixed in time-rated scale whereas following the norms formulated by M/s. BCCL or as per JBCCI policy decision their wage of piece-rate should have been protected while fixing the wages in time-rated pay scale after conversion from piece-rated to time-rated. During the argument it has been urged that under similar circumstances several other workmen working in different collieries have been extended the relief following the same norms and policy of M/s. BCCL and the pay protection was made while fixing or revising their pay scale after their conversion from piece-rate to time-rate.

On the other hand, as seen above, the definite stand of the management in the aforesaid context is that the concerned workman are getting their wages as per their designation and they themselves opted from working in time-rated job and accepted the wages of that category with effect from June, 1992. Its further contention is that the workmen were given initial basic of the category in which they were working and no question of protection of wages arises in their case.

So far as the exact date of conversion of the concerned workmen from piece-rated to time-rated is concerned the same varies in view of the statements made. As per the written statement of the workmen the said conversion was made in the month of January, 1988 but till June, 1992 they went on getting the same scale of piece-rate with difference of wages. In para 8 of the rejoinder of the workmen however it is mentioned that the conversion from piece-rated to time-rated was made in June, 1992. The workman himself in his evidence as WW-1 has said that they performed the job of piece-rated upto 1988 and thereafter regularised in time-rated job from the year 1992. In the management's written statement's the date of

congersion from piece-rated to time-rated has been mentioned as June, 1992 but the management's witness in cource of his evidence as MW-1 has said that the conversion was made by order dated 28-4-91. The copy of the order by which the converison from piece-rated to time rated was made has not been filed by either of the side Ext.W-2 is the copy of the petition submitted before the A.L.C.(C), Dhanbad by the sponsoring union raising industrial dispute. In the said application it has been mentioned that though the concerned workmen were converted from piece-rated to time-rated in January, 1988 but the management continued to pay them the Group wages of miner/loader plus SPRA i.e. Rs.43.31 as group basic wage plus Rs.12.74 as SPRA upto 28-6-92 and it is only from 21-6-92 they were put in starting basic salary of Rs.42.18 in cases of three workers and Rs.40.78 in case of fourth worker. Though not in such a detailed manner but in the written statement of the workman also the said fact has been mentioned. The management in its rejoinder has not denied the said fact and so out of the materials it can be gathered that the concerned workmen were placed in time-rated job in the year 1988 but they were given initial basic of time-rated category only w.e.f. 1-6-92 and between January, 1988 to 20-6-92 they had been getting the same piece-rated scale i.e. group basic plus SPRA.

7. In support of the aforesaid stand taken by the workman reliance has been placed upon clause 3:11:5 of NCWA-IV and also upon two documents filed (Ext.W-2 and W-3) to show that in the case of similar nature, in respect of few workman of different collieries protection of wages while fixing their wages in time-rated category was made. Ext.W-1 are just pay slips which have been filed the purpose of showing that the concerned workmen are getting less wages and on account of that they are suffering a lot.

8. It is provided in clause 3:11:5 of NCWA-IV that special piece-rated allowance will not count for computation of tub-rates/piece rates/pre-rate payment for additional tubs. It is further mentioned that this amount will, however, be treated basic for all other purposes. The emphasis from the side of the workmen is upon this part of the said clause and argument is that "for all other puposes" includes fixation of pay scale at the time of conversion from piece-rate to time-rate also and so in terms of this clause at the time of such conversion and fixation of pay scale the special piece-rate allowace is required to be treated basic. It is true that there is no clear mention anywhere specifically that the special piece-rate allowance has to be taken into consideration while fixing the pay scale in time-rated category. But the aforesaid interpretation of the said clause and the submission thereon made on behalf of the workmen, does not appear to be devoid of substance. In course of the argument it has not been satisfied from the side of the management as to why "all other puposes" cannot be taken to include the fixation of pay scale in time-rated category at the time of conversion. also. Though it has been emphatically urged on behalf of the management and the management's witness MW-1 has also said in course of his evidence that there is no pay protection in such conversion from piece-rate to time-rate as per the company's rule, but no any material showing any such rule or policy of the company has been placed in support of such stand being taken. Nothing has been brought on record to show that no pay protection has been provided in such conversion from piece-rated to time-rated scale. Interestingly, the management's witness (MW-1) in course of his cross-examination has stated about the existence of some instruction also of the compay in that regard and when the suggestion was made to him in regard to the said fact he replied that it is not a fact that there is no such instruction for not taking into consideration special piece-rated allowance in fixation of wages in time-rated job. Neither there is any mention of any such instruction, in the written statement of the management nor anything has been put forward to show about existence of any such instruction.

Significantly the workmen are not simply relying upon the aforesaid clause of NCWA-IV but their reliance is upon Ext.W-2 and W-3 also which are the documents produced to show that in regard to same nature of relief and under similar nature of circumstances protection of wages of some of the workmen of other collieries was made while fixing their wages in time-rated category. In course of the argument a copy of letter dated 17/22-7-2002 sent to the A.L.C.(C) Dhanbad by the Project Officer of Sendra Bansjora colliery and one note-sheet dated 26-6-2000 containing endorsement and signature of different officials of the said colliery have been produced. With the help of this document the submission has been made that even recently in case of two workmen of the said colliery pay protection has been made by extending Group Wages with SPRA. Particularly having gone through these two documents it becomes clear that the matter related to alleged incorrect fixation of basic wages after promotion in time-rated category from piece-rated and non-inclusion of SPRA in respect of those two workmen of the said colliery. It appears out of the same that during the pendency of the industrial dispute before the A.L.C.(C), Dhanbad the management conceded the said demand of those workmen and their wages were fixed by including SPRA and accordingly Conciliation Officer was informed that the demand of the union was fulfilled and so industrial dispute be dropped. This clearly supports the assertion of the workmen that the management has been extending the relief under similar nature of case but in case of the concerned workmen the attitude and conduct of the management are quite different and most unjustified. In regard to the aforesaid document the only submission which has been made form the side of the management is that any consideration made by the management or any settlement made in respect of any particular case cannot

be taken to have any binding effect upon other cases in which there may be the dispute of the same nature. It is true that there is no binding effect as such but at the same time it sufficiently goes to show that at once place the management is taking the stand that as per rule and policy no pay protection can be made at the time of conversion from piece-rated to time-rated like its stand in the instant case and at the other under the identical circumstances where the claim is for fixing the pay scale by protecting the wages of piece-rated, the management has been making consideration and granting relief. It cannot be believed or accepted that the management has been extending the said relief in case of other workmen whether on the basis of settlement or as per its own initiative in violation of company's rules and JBCCI policy decision. It can well be assumed that only upon being satisfied that such actions on the part of the management are well covered under the rules and policies they are entering into settlements and extending the relief to others in the matter of protection of their wages under similar circumstances.

Therefore, in view of all the aforesaid I am convined that the concerned workmen also deserve to be treated in the same way as others and they also deserve to be provided the relief as prayed by them regarding protection of their wages while conversion from piece-rated to time-rated.

9. It has been strenuously urged on behalf of the management that if the concerned workmen were not satisfied they could have declined their placement in time-rated category at the time itself when the conversion was made. But they sat idle.opted for the job of said category and received the pay scale of time-rated category and only thereafter much belatedly after the lapse of about five years they raised the industrial dispute. According to the submission, this itself is a sufficient ground for extending any relief to the workmen as their demand made or the dispute raised is "over-stale" in support of such submission the reliance has been place upon Ext. M-1, notice date 7-6-91 by which by mentioning the names of about 97 workmen who were placed in time-rated category, their objections were invited, if any.

There does not appear to be much force in the aforesaid submission being made. As it has already been observed above on the basis of materials that is only from 21-6-1992 the concerned workmen were placed in starting basic salary of time-rated category and from 1988 till then they have been getting pay scale of piece-rated. The industrial dispute was raised on their behalf in the month of October, 1992 and so only after about 3 to 4 months form the date when they started getting initial basic scale of time-rated category the industrial dispute was raised. Despite the aforesaid same delay caused can be attributed to the workmen or the union also. When in the year 1988 itself the workmen were placed in time-rated category and were not getting difference of wages of a higher category then they could have raised the objection in that regard and could have pursued their demand for placing them in proper pay scale of higher category with the protection of their piece-rated wages or by including SPRA but they did not do so and went on getting the same wages as they were getting as piece-rated workers till June, 1992 and only when on 21-6-92 they were placed in pay scale of time-rated category after about 3 to 4 months thereafter thy raised the industrial dispute. Nothing has been brought on record to show that between January, 1988 to September, 1992 the workmen have been pursuing their claim or the demand before the management. Therefore, though simply on the ground of delay the relief as claimed by the workmen cannot be held unjustified at the same time the relief is to be granted to them keeping in view the latches on their part as well, as noticed above.

10. Thus, the concerned workmen deserve the relief as prayed, for but they deserve to be paid the difference of their wages and allowance with effect from the date of raising of the industrial dispute before the conciliation officer i.e from 6-10-1992 and not from the date as claimed by them.

11. The award is thus, made hereunder:

The demand of the union for protection of the wages as per JECCI instructions at the time of conversion from piece-rate to time-rate of the concerned workmen, Rampat chuahan, Balmukand Pandit, Ram Lakhan Pandit and Md. Murteza Aluned by the management of P.B Area No. VII of m/s.SB.C.C.Ltd. is justified and the concerned workmen deserve relief as claimed in that regard. Consequently, the management is hereby directed to take necessary steps in the light of observation, as made above and make payment of difference of wages to the concerned workmen w.e.f 6-10-1992, within 60 days from the date of publication of the award.

However, there would be no order as to cost.

S.H. KAZMI, Presiding Officer

नई दिल्ली, 13 दिसम्बर, 2002

का. आ. 49.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. को. लि.के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, II धनबाद के पंचाट (संदर्भ संख्या 17/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-12-02 को प्राप्त हुआ था।

[सं. एल-20012/268/95-आई.आर. (सी-I)]

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 13th December, 2002

S.O. 49.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 17/99) of the Central Government Industrial Tribunal II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of B. C. C. L. and their workman, which was received by the Central Government on 11-12-2002.

[No. L-20012/268/95-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT

Shri B. BISWAS, Presiding Officer

In the matter of an industrial dispute under Section 10(1)(d) of the I. D. Act, 1947

REFERENCE No. 17 OF 1999

PARTIES:

Employers in relation to the management of Bhulanbararee Colliery of M/s BCCL and their workman.

APPEARANCES:

On behalf of the workman	:	None.
On behalf of the employers	:	Shri D.K. Verma, Advocate.
State	:	Jharkhand
Industry	:	Coal

Dated, Dhanbad the 28th November, 2002

ORDER

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under section 10 (1) (d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/268/95-I.R. (C-I) dated, the 7th January, 1999.

SCHEDULE

"KYA BHULAN BARAREE COLLIERY KEY PRAVADHANTANTRA DWARA 40.5.CUBIC FIT KE KOYALA TUB KE STHAN PAR 54 CUBIC FIT KA KOYALA TUB CHALU KARNA UCHIT EVAM NAYASANGAT HAI ? KYA YE BARRE TUB KARMAKARO KEY LIYA PURWATA SURAKSHSHIT HAI? YADI NAHI TO KARMAKAR KIS RAHAT KEY PATRA HAI?"

2. In this reference neither the concerned workman nor his representative appeared. Only the management side appeared in this reference through their learned Advocate. It is seen from the record that the instant reference was received by this Tribunal on 23-7-99 and since then it is pending for disposal registered notices and show cause notices were issued to the workman side but inspite of the issuance of notices they failed to turn up. In terms of Rule 10 B of the I.D. Central Rules, 1957 submission of W.S by the concerned workman within 15 days is a mandatory one. The concerned workman not only violated the said provision of the Rules but also did not consider necessary to give any response to the notices issued by this Tribunal. In natural course the question which will arise is what will be the fate of the reference made by the Ministry for its disposal. The reference is made on the basis of dispute based by the concerned workman/union. Naturally responsibility rests with the concerned workman/union to assist the court to dispose of the reference in issue on merit. In view of the decision reported in 2002(94)FLR 624 it will not be just and proper to pass 'No. dispute' Award when both the parties remain absent. There is also no scope to answer the reference on merit in absence of any W.S and available documents. There is no dispute to hold that when any reference is made it is expected to be disposed of on merit but when the parties do not take any step or do not consider even to file W.S such expectation to dispose of the reference on merit comes to an end. It is not expected that for years together the court will pursue the matter sue moto with the expectations for appearance of the workman inspite of issuance of registered notices. As per I.D. Act the workman excepting under provisions of section 2A is debarred from raising any industrial dispute. The disputes are mainly raised by the Union for their workmen. These unions inspite of receiving notices did not care to appear before the court for the interest of the workman and as a result they have been deprived of getting any justice. Until and unless the attitude of the union is change I consider that this uncalled for situation will persist. Definitely it is the duty of the court to dispose of the reference on merit but it depends on the cooperation of both sides. Here the record will clearly expose that sufficient opportunities had been given to the workman/ union but yielded no result. This attitude shows clearly that the workman side is not interested to proceed with the hearing of the case for disposal of merit.

Under the facts and circumstances, I also do not find any sufficient reason to drag on the case for an indefinite period. Accordingly as there is no scope to dispose of the reference in question on merit, the same is closed.

B. BISWAS, Presiding Officer

नई दिल्ली, 13 दिसम्बर, 2002

का. आ. 50.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. को. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 325/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-12-2002 को प्राप्त हुआ था।

[सं. एल-20012/275/99-आई.आर. (सी.-I)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 13th December, 2002

S.O. 50.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 325/99) of the Central Government Industrial Tribunal II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 11-12-2002.

[No. L-20012/275/99-IR(C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2) AT DHANBAD

PRESENT

SHRI B. BISWAS,

PRESIDING OFFICER

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act, 1947

Ref. No. 325 of 1999

PARTIES: Employers in relation to the management of Sudamdih Shaft Mine of M/s. BCCL and their workman.

APPEARANCES:

On behalf of the workman : None

On behalf of the employers : Shri R. N. Ganguly, Advocate

State : Jharkhand Industry : Coal.

Dhanbad, Dated, the 20th November, 2002

ORDER

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/275/99 (C-I), dated, the 24th November, 1999.

SCHEDULE

"Whether the action of the Management of Sudamdih Shaft Mine of M/s.B CCL in dismissing Shri Mohan Manjhi from the services of the company w.e.f. 11-1-95 is justified? If not, to what relief the workman is entitled?"

2. In this reference neither the concerned workman nor his representative appeared before this Tribunal. However, only the management side made their appearance in it. It is seen from the record that the instant reference was received by this Tribunal on 8-12-99 and since then it is pending for disposal. Registered notices an show cause notices were issued to the workman but inspite of assuance notices the workman side has failed to than up. In terms of Rule 10 B of the I.D. Central Rules, 1957 submission of W. S. by the concerned workman within 15 days is a mandatory one. The concerned workman not only violated the said provision of the Rules but also did not consider necessary to give any response to the notices issued by this Tribunal. In natural course the question which will arise is what will be the fate of the reference made by the Ministry for its disposal. The reference is made on the basis of dispute raised by the concerned workman/union. Naturally responsibility rests with the concerned workman/union. To assist the Court to dispose of the reference in issue of merit. In view of the decision reported in 2002(94) FLR 624 it will not be just and proper to pass 'No dispute' Award when both the parties remain absent. There is also no scope to answer the reference on merit in absence of any W.S. and available documents. There is no dispute to hold that when any reference is made it is expected to be disposed of on merit but when the parties do not take any step or do not consider even to file W.S. such expectation to dispose of the referenee on merit comes to an end. It is not expected that for years together the Court will pursue the matter suo motu with the expectations for appearance for the workman inspite of issuance of registered notices. As per I.D. Act the workman excepting under provisions of Section 2A is debarred from raising any industrial dispute. The disputes are mainly raised by the Union for their workman. These unions inspite of receiving notices did not care to appear before the Court for the interest of the workman and as a result they haven been deprived of getting any justice until and unless the attitude of the union is changed I consider that this uncalled for situation will persist. Definitely it is the duty of the Court to dispose of the reference on merit but it depends on the cooperation of both sides. Here the record will clearly expose that sufficient opportunities had been given to workman/union but yielded no result. This attitude shows clearly that the workman side is not interested to proceed with the hearing of the case for disposal on merit.

Under the faets and circumstanees, I also do not find and sufficient reason to drag on the case for an indefinite period. Accordingly as there is not scope to dispose of the reference in question on merit, the same is closed.

B. BISWAS, Presiding Officer

नई दिल्ली, 13 दिसम्बर, 2002

का. आ. 51.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. को. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 65/91) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-12-2002 को प्राप्त हुआ था।

[सं. एल-20012/308/90-आई.आर. (सी.-I)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 13th December, 2002

S.O. 51.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947); the Central Government hereby publishes the award (Ref. No. 65/91) of the Central Government Industrial Tribunal II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 11-12-2002.

[No. L-20012/308/90-IR(C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2) AT

DHANBAD

PRESENT

SHRI B. BISWAS,

PRESIDING OFFICER

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act, 1947

Ref. No. 65 of 1991

PARTIES: Employers in relation to the management of Ksahdinari Colliery of M/s. BCCL and their workman.

APPEARANCES:

On behalf of the workman : Shri D. Mukherjee, Secretary, Bihar Colliery Kamgar Union.

On behalf of the employers : None

State : Jharkhand Industry : Coal.

Dated, Dhanbad, the 28th November, 2002

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under section 10(1)(d) of the I. D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/308/90 I.R. (Coal-I), dated, the 21st March, 1991.

SCHEDULE

"Whether the action of the Management of Aakashkinarees Colliery in Govindpur Area No. III of M/s. BCCL is justified in denying Tech. & Sup. Grade "A" pay scale as per N.C.W.A. IV to Shri Mundrika Choudhary Electrical Supervisor at par with Shri T. K. Mitra, Electrical Supervisor? If not, to what relief the workman is entitled?"

2. The case of the concerned workman according to W.S. submitted by the sponsoring Union in brief on his behalf is as follows:—

The sponsoring Union on behalf of the concerned workman submitted that the Agent of the colliery by an office Order dt. 9-6-89 provided the concerned workman and T.K. Mitra, both Electrical Supervisor to work alternative in 2nd and 3rd shift. By the said order both the aforesaid workman were directed to take responsibility for maintenance of surface and underground installation and also to make statutory inspection of underground equipment and to attend breakdown of machineries. They submitted that nature of job performs by the concerned workman and T.K. Mitra are same but instead of performing same nature of duties the management is paying wages to him as per Grade C while Shri T. Mitra is getting wages as per Technical and supervisory Grade-A. They submitted that to remove such ugly discrepancy the matter in issue was taken up with the management with a request to pay same wages as per Gr. to the concerned workman with that of Shri T.K. Mitra but the management refused to consider their appeal. They alleged that the decisions of the managements to that effect was not only illegal and arbitrary but also it violated the principle of natural justice. Accordingly they raised an industrial dispute before the ALC(C), Dhanbad for conciliation which ultimately resulted reference to this Tribunal, for award.

3. The management on the contrary after filing W.S.-cum-Rejoinder have denied all the claims and allegations which the sponsoring union on behalf of the concerned workman asserted in the W.S.

4. They submitted that Electrical Supervisors are the competent persons authorised under Regulation 36 of the Coal Mines Regulation, 1957 to carry on the duties under Rule 45 of the Indian Electricity Rules. The Electrical Supervisors are placed in Technical and Supervisory Grade C, B and A of NCWA on the basis of seniority-cum-merit as per the cadre scheme circulated by the Implementation Instruction No. 30 of 26-6-84 of the JBCCI. They further submitted that the concerned workman obtained his Electrical Supervisory certificate in the year 1986. He submitted his application for promotion for the post of Electrical Supervisor and accordingly he was authorised as competent person under the Indian Electricity Rules to work as Electric Supervisor. His case was considered by the D.P.C. in the year 1988 and he was

promoted for the post of Electrician to the post of Asstt. Foreman (Electrical) in Grade-C. As per cadre scheme his promotion to Grade B will be considered by D.P.C. after completion of his service for three years as Technical and Electrical Supervisor Grade-C. Disclosing this fact the management submitted that claim of the concerned workman for the promotion in Grade-A from the date of issuing authorisation to him under Regulation 36 is vexatious as it contravened the provision of the promotion. It is further submitted by the management that T.K. Mitra is working as Electrical and Technical Supervisor Grade-A since 1932. He passed the Electrical Supervisorship certificate in the year 1964. He was Foreman incharge (Electrical) prior to taking over of the management of the colliery. While the concerned workman passed this Electrical Supervisorship certificate about 22 years after from the date of Sri.T.K. Mitra passing the Certificate. Accordingly there is no scope at all to make any comparison between the concerned workman and Sri T.K. Mitra in relation to his claim. The claim of the concerned workman is not only absurd but also finds no basis for its consideration as because of fact that by virtue of long seniority while T. K. Mitra is functioning as Foreman incharge he is discharging his function as Assistant Foreman. Accordingly management submitted their prayer to reject the claim of the concerned workman.

5. The points to be decided in this reference are:—

"Whether the management of Akashkinari colliery in Govindpur Area III of M/s.B.C.C. Ltd. is justified in denying Technical and Supervisory Grade-A pay scale as per NCWA IV to Mudrika Choudhury at per with T.K Mitra, Electrical Supervisor? If not, to what relief the workman is entitled?"

6. FINDING WITH REASONS

It is seen from the record that the management has examined one witness as MW-1 to substantiate their claim. On the contrary the concerned workman did not adduce any evidence in order to substantiate his claim though the present reference has come into existence in view of industrial dispute raised by the sponsoring union on his behalf.

7. Now let us consider if the claim of the concerned workman stands on any stable footing or not. It is the claim of the concerned workman that he himself and T.K. Mitra though performing the same and similar nature of job the management has been paying him the wages of Technical and Supervisory Grade 'C' whereas the management is paying Sri T. K. Mitra wages of Technical and Supervisory Grade-A. He submitted that to remove such urgly discrepancy he submitted representation to remove this discrepancy but the management refused to do so due to their anti-labour attitude. The management on the contrary submitted that the concerned workman was appointed as Electrician in the year 1980 and was placed in cat.IV. They submitted that Electricians are placed in cat.IV, V & VI. According to their seniority and merit in accordance with the cadre scheme applicable to electrical and mechanical personnel. They submitted that Electrical Supervisors are competent persons authorised under Regulation 36 of the Coal Mines Regulations, 1957 to carry on the duties under the Indian Electricity Rules and to discharge such functions the prime condition which is required is that he must possess Electrical Supervisory certificate. They disclosed that Electrical Supervisors are placed in Technical and Supervisory Gr. C.B.&A. OF N.C.W.A. on the basis of seniority-cum-merit as per the cadre scheme circulated by Implementation Instruction No.30 dt. 26-6-84 of the JBCCI. They submitted that the Electricians after passing the prescribed test or the examination for Electrical Supervisorship is eligible for consideration for his promotion to the post of Assistant Foreman Chargeman (Electrical) in technical and supervisory Grade. 'C' by the Departmental promotion committee. In this connection they disclosed further that Assistant Foreman (Electrical) is considered for the promotion to the post of Foreman (Electrical) after he achieves three years of experience and after he is being recommended by the D.P.C . in the same process a foreman is considered for his promotion to the post of Foreman incharge and accordingly they are placed in Grade B&A from Grade C as the Foreman incharge is considered as head of the Electrical department, the Asstt. Foreman and Foreman work under him in the said department. Admitting the fact that the concerned workman's posting in the same Electrical Deptt. with T.K. Mitra management submitted that the concerned workman has got his Electrical supervisory certificate in the year 1986 and thereafter he submitted his application for his promotion to the post of Electrical Supervisory and accordingly he was authorised as competent person under the Indian Electricity Rules to work as Electrical Supervisor . His case was considered by the D.P.C. in the year 1988 and he was promoted to the post of Asstt. Foreman (Electrical) in Grade-C from the post of Electrician. From the evidence of MW-1 it transpire that in the year 1998 the concerned workman got his promotion in Grade B and at present he is discharging his duties in the said post.

8. Management in course of hearing has also specifically mentioned the duties of the Asstt. Foreman, and Foreman incharge to be performed. They disclosed that Asstt. Foreman and Forman work directly secretly under the Foreman in charge. His position in the department is just below the Engineer of the colliery and he mostly performs the supervisory and administrative duties in his department while the Foreman and Asstt. Foreman perform the duties of testing and checking of electrical equipments. The Asstt. Foreman as part of his duty also caries on the checking and testing of as the machineries in the department. Showing the

differentiation of duties of the Asstt. Foreman and Foreman with the Foreman incharge management submitted that Sri T.K. Mirta started functioning his duties as Electrical Supervisor in Technical and Supervisory Gr.-A since 1972 he passed his electrical supervisorship certificate in the year 1964, i.e. more than 22 years before he obtained the said certificate. By virtue of his long experience T.K. Mitra at present while functioning as Foreman in charge the concerned workman is functioning as Foreman in Grade-B. Apart from the long experience of T.K. Mitra the management further submitted that as per cadre scheme the concerned workman is not entitled to get Technical and Supervisory Grade-A post meant for Foreman in charge (Electrical) without following the procedure as laid down therein. Accordingly, management submitted that they did not commit any illegality in refusing the claim of the concerned workman. I have considered the order bearing No. SG/PD/88/1445 dt. 22-6-88 issued by the management by which the concerned workman was transferred to Kashkinari Colliery as Electrical Supervisor in Tech.& Supervisor Grade-C. While from L.P.C. of Sri T.K. Mitra issued by Area Finance Manager, Area No.III it transpires that in the year 1978 he was transferred to the same colliery as Electrical Supervisor. In natural course by virtue of his long experiences and also following the policy as laid down in the cadre scheme he has got his promotion to the post of Foreman in charge. Therefore, there is no scope to equate the experience and seniority which the concerned workman acquired by this time with that of Sri T.K. Mitra.

9. It is the claim of the concerned workman that he is entitled to get placement in Technical and Supervisory Gr.-A with that of T.K. Mitra as they are functioning the same duty. It has already been discussed above what duties the Asstt. Foreman, Foreman and Foreman incharge (Electrical) perform. It is clear from the said discussion that Asstt. Foreman works under the active control of the Foreman in charge (Electrical), i.e. being subordinate workman he works under the foreman in charge. In natural course onus rests on the concerned workman to establish that violating the policy laid down in the cadre scheme only by virtue of his performing duties as Asstt. Foreman (Electrical) he is very much entitled to get Electrical Supervisor Grade-A scale. Mere submission of certain facts in the W.S. cannot be considered a substantive piece of evidence in support of his claim without having its corroboration by cogent evidence. It is seen that in spite of giving sufficient opportunities the concerned workman did not consider necessary to assume any evidence for the propose of substantiating his claim. It is the specific claim of the management that Electrical Supervisors are placed in Technical and Supervisory Grade C, B & A of NCWAs on the basis of seniority-cum-merit as per the cadre scheme circulated by Implementation Instruction No.30 dt. 26-6-84 of the J.B.C.C.I onus was with the workman to establish that the management has refused to give promotion violating the cadre scheme. He also cannot exonerate his responsibility to show that in spite of long seniority of T.K. Mirta he is very much entitled to get his grade as demanded by him.

10. After careful consideration of all the facts and circumstances I find no hesitation to say that the sponsoring Union has failed to substantiate the claim of the workman. They have failed to produce a single scrap of paper to show that management acted illegally in refusing the claim of the concerned workman. The sponsoring Union also has failed to show that though there was long gap of experience between the two workmens, i.e. the concerned workman and T.K. Mitra he is entitled to get Grade. A at per with said Mitra violating all the provisions of the cadre scheme since his date of his functioning as Electrical Supervisor Grade 'C'. Unhesitatingly, I therefore hold that the concerned workman has lamentably failed to establish his claim though sponsoring Union. He is not, therefore, entitled to get any relief according to his prayer.

In the result, the following Award is entitled :—

"The management of Akashkinaree Colliery in Govindpur Area No.III of M/S BCCL is justified in denying Tech.& Sup.Grade 'A' pay scale as per N.C.W.A.IV to Shri Mundrika Choudhary Electrical Supervisor at par with Shri T.K. Mitra Electrical Supervisor. Consequently, the concerned workman is not entitled to get any relief."

B. BISWAS, Presiding Officer

नई दिल्ली, 13 दिसम्बर, 2002

का. आ. 52.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. को. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 238/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-12-2002 को प्राप्त हुआ था।

[सं. एल-20012/327/01-आई.आर. (सी.-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 13th December, 2002

S. O. 52.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 238/2001) of the Central Government Industrial Tribunal II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman,

which was received by the Central Government on 11-12-2002.

[No. L-20012/327/01-IR(C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD.

PRESENT: SHRI B. BISWAS, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I. D. Act, 1947.

REFERENCE NO. 238 OF 2001

PARTIES: Employers in relation to the management of Katras Chaitudih Colliery of M/s. BCCL and their workman.

APPEARANCES:

On behalf of the Workman : None

On behalf of the Employers : None

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 26th November, 2002

ORDER

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1) (d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No.L-20012/327/2001. I.R. (C-I), dated, the 19th September, 2001.

SCHEDULE

" Whether the action of the management of Katras Chaitudih Colliery of BCCL in not referring the case of Sri Ramasis Pandey to the Apex Medical Board for assessment of the age as per I.I.No.76 of JBCCI is justified ? If not, to what relief the concerned workman entitled ?"

2. In this reference neither of the parties turned up before this Tribunal. It is seen from the record that the instant reference was received by this Tribunal on 28-9-2001 and since then it is pending for disposal. Registered notices and show cause notices were issued to the workman as well the management but inspite of the issuance of notices they failed to turn up. In terms of Rule 10B of the I.D. Central Rules, 1957 submission of W.S by the concerned workman within 15 days is a mandatory one. The concerned workman not only violated the said provision of the Rules but also did not consider necessary to give any response to the notices issued by this Tribunal. In natural course the question which will arise is what will be the fate of the reference made by the Ministry for its disposal. The reference is made on the basis of dispute raised by the concerned workman/union. Naturally responsibility rests with the concerned workman and the management to assist the Court to dispose of the reference in issue on merit. In view of the decision reported in 2002 (94) FLR 624 it will not be just and proper to pass 'No dispute' award when both the parties remain absent. There is also no scope to answer the reference on merit in absence of any W.S. and available documents. There is no dispute to hold that when any reference is made it is expected to be disposed of on merit but when the parties do not take any step or do not consider even to file W.S. such expectation to dispose of the reference on merit comes to an end. It is not expected that for years together the Court will persue the matter suo moto with the expectations for appearance for the workman and the management inspite of issuance of registered notices. As per I.D. Act the workman excepting under provisions of Section 2A is debarred from raising any industrial dispute. The disputes are mainly raised by the Union for their workmen. These unions inspite of receiving notices did not care to appear before the Court for the interest of the workman and as a result they have been deprived of getting any justice untill and unless the attitude of the union is changed I consider that this uncalled for situation will persist. Definitely it is the duty of the Court to dispose of the reference on merit but it depends on the cooperation of both sides. Here the record will clearly expose that sufficient opportunities had been given to the workman/union but yielded no result. This attitude shows clearly that the workman side is not interested to proceed with the hearing of the case for disposal on merit.

Under the facts and circumstances, I also do not find any sufficient reason to drag on the case for an indefinite period. Accordingly as there is no scope to dispose of the reference in question on merit, the same is closed.

B. BISWAS, Presiding Officer

नई दिल्ली, 13 दिसम्बर, 2002

का. आ. 53.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. को. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 217/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-12-2002 को प्राप्त हुआ था।

[सं. एल-20012/348/97-आई.आर. (सी.-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 13th December, 2002

S. O. 53.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the award (Ref. No. 217/98) of the Central Government Industrial Tribunal II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 11-12-2002.

[No. L-20012/348/97-IR(C-1)]

S.S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT: SHRI B. BISWAS, Presiding Officer

In the matter of an Industrial Dispute under Section 10 (1) (d) of the I. D. Act, 1947.

REFERENCE NO. 217 OF 1998

PARTIES: Employers in relation to the management of Rehabilitation workshop of Lodna Area of M/s. BCCL and their workman.

APPEARANCES:

On behalf of the Workman : None

On behalf of the Employers : None

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 26th November, 2002

ORDER

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1) (d) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/348/97-IR (C-I) dated the 30th November, 1998.

SCHEDULE

"Whether the action of the management of Rehabilitation workshop of Lodna Area of M/s. BCCL, P.O. Lodna, Dist. Dhanbad in dismissing Sri Bhagirath Mehato w.e.f. 31-3-94 from services of the company is justified ? If not, to what relief the workman is entitled ?"

2. In this reference neither of the parties turned up before this Tribunal. It is seen from the record that the instant reference was received by this Tribunal on 22-12-98 and since then it is pending for disposal. Registered notices and show cause notices were issued to the workman as well the management but inspite of the issuance of notices they failed to turn up. In terms of Rule 10B of the I.D. Central Rules, 1957 submission of W.S. by the concerned workman within 15 days is a mandatory one. The concerned workman not only violated the said provision of the Rules but also did not consider necessary to give any response to the notices issued by this Tribunal. In natural course the question which will arise is what will be the fate of the reference made by the Ministry for its disposal. The reference is made on the basis of dispute raised by the concerned workman/union. Naturally responsibility rests with the concerned workman and the management to assist the Court to dispose of the reference in issue on merit. In view of the decision reported in 2002 (94) FLR 624 it will not be just and proper to pass 'No dispute' Award when both the parties remain absent. There is also no scope to answer the reference on merit in absence of any W.S. and available documents. There is no dispute to hold that when any reference is made it is expected to be disposed of on merit but when the parties do not take any step or do not consider even to file W.S. such expectation to dispose of the reference on merit comes to an end. It is not expected that for years together the Court will persue the matter suo moto with the expectations for appearance for the workman and the management inspite of issuance of registered notices. As per I.D. Act the workman excepting under provisions of Section 2A is debarred from raising any industrial dispute. The disputes are mainly raised by the Union for their workmen. These unions inspite of receiving notices did not care to appear before the Court for the interest of the workman and as a result they have been deprived of getting any justice untill and unless the attitude of the union is changed I consider that this uncalled for situation will persist. Definitely it is the duty of the Court to dispose of the reference on merit but it depends on the cooperation of both sides. Here the record will clearly expose that sufficient opportunities had been given to the workman/union but yielded no result. This attitude shows clearly that the workman side is not interested to proceed with the hearing of the case for disposal on merit.

Under the facts and circumstances, I also do not find any sufficient reason to drag on the case for an indefinite period. Accordingly as there is no scope to dispose of the reference in question on merit, the same is closed.

B. BISWAS, Presiding Officer

नई दिल्ली, 13 दिसम्बर, 2002

का. आ. 54.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. को. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II धनबाद के पंचाट (संदर्भ संख्या 155/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-12-2002 को प्राप्त हुआ था।

[सं. एल-20012/445/99-आई.आर. (सी.-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 13th December, 2002

S.O. 54.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the award (Ref. No. 155/01) of the Central Government Industrial Tribunal II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 11-12-2002.

[No. L-20012/445/99-IR(C-I)]

S.S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2) AT DHANBAD

PRESENT

SHRI B. BISWAS,

PRESIDING OFFICER

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act, 1947

Ref. No. 155 of 2001

PARTIES: Employers in relation to the Management of Kustore Area of M/s. BCCL and their workman.

APPEARANCES:

On behalf of the workman : None

On behalf of the employers: Shri N. Nath, Advocate.

State : Jharkhand Industry : Coal.

Dated, Dhanbad, the 28th November, 2002

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under section 10(1)(d) of the I. D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide Ministry's Order No. L-20012/445/99 I.R. (C-I), dated, the 3-2-2000.

SCHEDULE

"KYA HURALADIH KHADAN, BHARAT COKING COAL LIMITED, DHANBAD PRABANDAN DWARA KARAMCHARI SHRI GHAMARI MOLLAH KE NAYA BETAN NIRDHARAN MEY KARAMCHARI DWARA PURWA MEY PRAPTA S.P.R.A. RASHI KO DHYAN MEY NAHI RAKHTEY HUYEY NAYA BETAN NIRDHARIT KARNA NIDHI SAMMAT, SAHI EVAM UCHIT HAI ATHAWA NAHI ? YADI NAHI TO KARAMCHARI KIN LAVO KEY LIYE HAKDAR HAI ?"

2. The case of the concerned workman according to the W.S. submitted by the sponsoring Union on his behalf in brief is as follows :—

It has been submitted by the sponsoring union that the concerned workman was employed as Miner/Loader with effect from 9-7-70 at Burragarh Colliery under Kustore Area but subsequently he was transferred to Hurriladih Colliery where he is still continuing his service. They submitted that while working as a Miner/Loader the concerned workman was being paid wages on piece rated basis. They disclosed that in the year 1991 management deployed him to the job of Dresser in Time rated and in the year 1998 his service was regularised. They alleged that before regularisation of the service the concerned workman as Miner/Loader in Group VA used to draw his wages Rs. 98.29 P. per day but after reguarisation of his service as Dresser in category (i) the management started paying him wages Rs.95.16 per day. Thus every day the concerned workman is getting less amount of Rs. 2.18P. per day.

3. Accordingly over such gross anomaly in the mattter of payment of wages the concerned workman submitted representation to the management but the management did not consider his prayer for removal of such anomaly. In the result the concerned workman raised an Industrial dispute which ultimately resulted reference to this Tribunal for Award.

4. Management on the contrary after filing W.S.-cum-rejoinder have denied all the claims and allegations which the sponsoring union asserted in the W.S. on behalf of the concerned workman. They submitted that the concerned workman was appointed as Miner/Loader on 9-7-90 and his service was regularised as Dresser in Cat.III vide letter No. 98/392 dt. 31-3-98. At the time of regularisation of service his basic wages was fixed as per decision taken in Central Consultative Committee as circulated vide letter No.BCCL/GM(R&IR)/SECY/97/950242-82 dt. 3-11-97 under which initial basis wages of category of regularisation plus SPRA earned by the workman concerned was protected to the extent of maximum of scale of Category III in which the workman was regularised. They disclosed that as the maximum of basic pay scale of Category III employee is Rs.92.98 paise per day the basic wages of the concerned workman was fixed as the Rs.92.98P. per day from 18-3-98. i.e. the date of his regularisation. Disclosing this fact the management submitted that the concerned workman was not the solitary workman but the wages of hundreds of workman have been fixed in the same process and for which they denied the fact that illegally, arbitrarily and also violating the principle of natural justice they fixed the wages of the concerned workman in Cat.III. In the circumstances they have submitted their prayer to pass award rejecting the claim of the concerned workman.

5. The points to be decided in this reference are:—

" KYA HURALADIH KHADAN, BHARAT COKING COAL LIMITED, DHANBAD PRABANDAN DWARA KARAMCHARI

SHRI GHAMARI MOLLAH KE NAYA BETAN NIRDHARAN MEY KARAMCHARI DWARA PURWA MEY PRAPTA S.P.R.A. RASHI KO DHYAN MEY NAHI RAKHTEY HUYEY NAYA BETAN NIRDHARIT KARNA NIDHI SAMMAT, SAHI EVAM UCHIT HAI ATHAWA NAHI ? YADI NAHI TO KARAMCHARI KIN LAVO KEY LIYE HAKDAR HAI ?"

FINDING WITH REASONS

6. It is seen from the record that neither the concerned workman nor the management adduced either any documentary or any oral evidence in order to substantiate their claim and counter claim inspite of giving sufficient opportunities to them. Accordingly relying on the pleadings of both sides it is to be looked into if the concerned workman deserves any award in his favour in view of his prayer.

It is admitted fact that the concerned workman was initially appointed as Miner/Loader at Burragarh Colliery under Kustore Area and there after he was transferred to Hurrilaidih Colliery in the same capacity on piece rated basis. It is also admitted fact that thereafter the service of the workman was regularised as Dresser in Category III, time rated basis with effect from March, 1998 and his basic wages was fixed as per decision taken in the Central Consultative Committee. According to the decision of the said committee initial basic wages of Category after regularisation plus SPRA earned by the concerned workman was protected to the maximum of their scale of Cat.III. The contention of the sponsoring Union is that when the concerned workman used to discharge his duties as Miner/Loader he used to draw basic wages as Rs. 72.03P. and SPRA as Rs. 26.26P. i.e. total of Rs. 98.29P. per day but while his service was regularised as Dresser in Cat.III on time rated basic his basic wages was fixes âs Rs. 68.90P and SPRA as Rs. 26.26P i.e. a total of Rs. 95.16P. per day and for which he started getting less wages to the tune of 2.18P. per day since the date of his regularisation of his serivice in the time rated scale of pay. The sponsoring union submitted that the concerned workman will be seriously prejudiced if he is deprived of getting his pay protection in respect of the amount in question which he is lossing every day.

7. On the contrary from the submission of the management it transpires that as per decision of the Central Consultative Committee circulated vide letter No.BCCL/GM(R & IR)5207/97/950242-82 of 3-11-97 the initial basic wages of Category of regularisation plus SPRA earned by the workmen concerned is protected to the extent of maximum of scale of category III in which the service of the present workman was regularised. They disclosed that basic scale in Category III wages of the concerned workman was fixed as Rs. 63.90 and the concerned workman earned SPRA to the tune of Rs. 26.26P. Accordingly his wages was fixed at Rs.95.16 P per day, the maximum of basic pay scale in Cat.III employee. The concerned workman has claimed his wages as Rs. 98.29P. instead of Rs. 95.16 per day as his wages.

8. Considering the submission of both sides as per pleadings I find no dispute to hold that the wages of the concerned workman has lowered down when his service was regularised in Cat.III as per time rated scale. According to the management the concerned workman was offered with the maximum wages as per the pay sclae in Cat.III and for which there is no scope to pay wages which he last drew as Minor/Loader in piece rated. The management further disclosed that they have offered that wages as per the decision of the Central Consultative Committee. The question which has been cropped up here is if the concerned workman is entitled to get for pay protection for Rs. 2.18P. per day. Before considering this fact it is to be considered if such practice is prevailing in the industry or not particularly in the case where a workman is swithched over to time rated scale from piece rated. The sponsoring Union inspite of getting ample opportunities to substantiate this fact did not consider necessary to produce any document. The wages of the workman are guided as per the provision of NCWAS. Therefore, onus on the concerned workman to establish that as per N.C. W.A. he is very much entitled to get his pay protection. I find to hesitation to say that the sponsoring union has faild to justifiy their claim in this regard. Therefore, considering all facts there is no scope to say that illegally and arbitrarily the management fixed the wages of the concerned workman in Category III while his service was regularisèd as Dresser.

In the result, the following Award is rendered:—

" KYA HURALADIH KHADAN, BHARAT COKING COAL LIMITED, DHANBAD PRABANDAN DWARA KARAMCHARI SHRI GHAMARI MOLLAH KE NAYA BETAN NIRDHARAN MEY KARAMCHARI DWARA PURWA MEY PRAPTA S.P.R.A. RASHI KO DHYAN MEY NAHI RAKHTEY HUYEY NAYA BETAN NIRDHARIT KARNA NIDHI SAMMAT, SAHI EVAM UCHIT HAI. ATTAH, KARMKAR KO KISHI LABH KA HAQDAR NAHI HAI."

B. BISWAS, Presiding Officer

नई दिल्ली, 13 दिसम्बर, 2002

का. आ. 55.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. को. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II धनबाद के पंचाट (संदर्भ संख्या 46/2001) को प्रकाशित

करती है, जो केन्द्रीय सरकार को 11-12-2002 को प्राप्त हुआ था।

[सं. एल-20012/446/2000-आई.आर. (सी.-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 13th December, 2002

S.O. 55.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 46/2001) of the Central Government Industrial Tribunal II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BECL and their workman, which was received by the Central Government on 11-12-2002.

[No. L-20012/446/2000-IR(C-1)]

S.S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No.2) AT

DHANBAD

PRESENT

SHRI B. BISWAS,

PRESIDING OFFICER

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act, 1947

Ref. No. 46 of 2001

PARTIES :	Employers in relation to the management of M/s. BCCL and their workman.
APPEARANCES :	
On behalf of the workman :	None
On behalf of the employer :	Shri U. N. Lall Advocate.
State : Jharkhand	Industry : Coal.

Dated. Dhanbad, the 26th November, 2002

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under section 10(1)(d) of the I. D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their order No. L-20012/446/2000(C-I), dated, the 19th Februray, 2001.

SCHEDULE

"Whether the action of the Management in not regularising the workman Sri Anil Kumar Singh, as Welder helper and not making payment of wages of the relevant Cat. is justified and legal? If not, to what relief is the workman entitled and from what date?"

2. In this reference a Memorandum of settlement under signature of both sides was filed before me. I have gone through the terms of settlement and I find that the terms contained therein are fair, proper and in accordance with the principles of natural justice. Accordingly I accept the said memorandum of settlement and pass an Award in terms there of which forms part of the Award as annexure.

B. BISWAS, Presiding Officer

BEFORE:

The Presiding Officer,

Central Government Industrial Tribunal No. 2,

DHANBAD.

Reference Case No. 46/2001

PARTIES:

The Employer in relation to the

Management of Dobari Colliery of Bastacola Area,

Bastacola, Bharat Coking Coal Limited.

AND

Their Workman/Union

Most Respectfully Sheweth on behalf of the Management:

1. That the Government of India, Ministry of Labour, Vide Notification No. L-20012/446/2000(C-1) dated 19-2-2001 has been pleased to refer this Industrial Dispute to this Hon'ble Tribunal for adjudication with the following Schedules:

SCHEDULE

"Whether the action of the management in not regularising the workman Sri Anil Kumar Singh, as Welder Helper and not making payment of wages of the relevant Cat. Is justified and legal? If not, to what relief is the workman entitled and from what date? "

2. That the above issue was also discussed bilaterally and finally and agreement has been amicably arrived at on 15-3-2002 out of Court (Copy of the Settlement in onclosed).

3. That the workman Sri Anil Kumar Singh and Sri Sukhdeo Chatterjee, the Branch Secretary, BCKU, Dobari Colliery have submitted an application dated 16-3-2002 addressed to the Presiding Officer, Central Government Industrial Tribunal No. 2, Dhanbad praying for withdrawal of the dispute (the application is enclosed).

4. That as per terms of settlement dated 15-3-2002, an office order bearing No. BCC/IX/6-B/2002/2459 dated 15/19-3-2002 has been issued where by the concerned workman Sri Anil Kumar Singh, SDL Mazdoor Cat. I has been regularised with financial benefit as Welder Helper in Category II w.e.f. 20-6-2001 i.e. from the date approval was

accorded for his regularisation (copy of office order is also enclosed).

5. That it would be evident that now no dispute between the workman/Union and Management subsists, as such it is prayed that a Settlement Award may kindly be passed in terms of the Settlement so that the above dispute may be treated as Settled/Closed.

And for this, the Employer shall be grateful.

For the Employer,

Singed Illigible

Enclosure: **As above.**

Form 'H'

(See Rule-58)

Memorandum of settlement arrived at between Management of Bastacolla Area, BCCL and the representatives of BCKU in the matter of regularisation of Shri Anil Kumar Singh as Welder Helper of Dobari Colliery arising out of reference to CGIT-II, Dhanbad.

Representing Management	**Representing Workman**
1. Sri K.M. Bansal, GM, Area IX.	1. Sri Jumrati Mia, Branch President, BCKU, Dobari Colliery.
2. Sri R. Singh, Dy. CPM, Area IX.	2. Sri Sukhdeo Chatterjee, Branch Secretary, BCKU, Dobari Colliery.
3. Sri S.C. Panda; Project Officer Dobari Colliery	3. Sri Anil Kumar Singh, Concerned Workman.
4. Sri R.P. Yadav, PM (IR), Bastacolla Area IX.	

Short recital of the case

Secretary, BCKU raised an ID before the ALC (C), Dhanbad for alleged denial of regularisation of Shri Anil Kumar Singh, SDL Mazdoor of Dobari Colliery for the post of Welder Helper which was registered as ID no. 1/60/2000. As no amicable settlement was arrived at between both the parties in the Conciliation proceeding the dispute was ended in failure and a F.O.C. report was sent by the ALC(C)-IV to the Secretary, Govt. of India, Ministry of Labour vide letter dated 29-9-2000 and subsequently the said dispute was referred to CGIT-II, Dhanbad by the Ministry of Labour vide order no. 20012/446/2000 dated 19-2-2001 on the following scheduled.

"Whether the action of the management in not regularising the workman Shri Anil Kumar Singh as Welder Helper and not making payment of wages of the relevant category is justified and legal? If not to what relief is the workman entitled and from what date?"

On receipt of the aforesaid reference for adjudication, the matter was bilaterally discussed with the union representative and accordingly both the parties agreed to settle the dispute amicably out the Court on the terms and of condition mentioned below:—

1. It was agreed that Shri Anil Kumar Singh, SDL Mazdoor, Cat. I will be regularised as Welder Helper in Cat. II w.e.f. 20-6-2001 (i.e. the date of approval accorded by Competent Authority) and his pay fixation will be made in the regularised category from 20-6-2001 with financial benefit.

2. Order of regularisation will be issued immediately on signing of this agreement by both the Parties.

3. Union agreed to withdraw the case from CGIT-II, Dhanbad immediately and to submit a copy of this agreement before the Tribunal to enable the Court to issue an order of no dispute award.

4. This will resolve the dispute in to-to and no further claim will be made by the union on the issue of this dispute.

5. It was also agreed to send a copy of the settlement to the appropriate authority under the pvovision of ID act and rules made thereunder.

Representing employer	**Representing Workman**
1. (K.M. Bansal) G.M., Area-IX	1. (Sumrati Mia)
2. (R. Singh) Dy. CPM, Area IX.	2. (Sukhdeo Chatterjee)
3. (S.C. Panday) Project Officer Dobari Colliery	3. (Anil Kr. Singh)
4. (R.P. Yadav) PM, Area-IX.	

नई दिल्ली, 13 दिसम्बर, 2002

का. आ. 56.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. को. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 224/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-12-2002 को प्राप्त हुआ था।

[सं. एल-20012/496/97-आई.आर. (सी.-I)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 13th December, 2002

S.O. 56.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 224/98) of the Central Government Industrial Tribunal II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of

BCCL and their workman, which was received by the Central Government on 11-12-2002.

[No. L-20012/496/97-IR(C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No.2) AT DHANBAD

PRESENT

SHRI B. BISWAS,

PRESIDING OFFICER

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

Ref. No. 224 of 1998

PARTIES : Employers in relation to the management of Kustore Area of M/s. BCCL and their workman.

APPEARANCES :

On behalf of the workman : Shri N. G. Arun, Authorised Representative.

On behalf of the employers : Shri R.N. Ganguly, Advocate.

State : Jharkhand Industry : Coal.

Dated, Dhanbad, the 26th November, 2002

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their order No. L-20012/496/97-I.R. (C-I), dated the 1st December, 1998.

SCHEDULE

"Whether the action of the management of Kustore Area of BCCL in denying regularisation of Sh. Anant Lal Jaswara, underground Munshi, Ena Colliery is Justified? If not, to what relief the workman is entitled?"

2. In this case both the parties appeared but only the workman side filed its W.S. The case then proceeded along its course. Subsequently, when the case was fixed a memorandum of settlement was filed before me under signature of both sides. Heard both sides on the said memorandum of Settlement. I have also gone through the terms contained therein and I find that the terms are fair, proper and in accordance with the principles of natural justice. I, therefore, accept the said memorandum of settlement and pass an Award in terms thereof which forms part of the Award as Annexure.

B. BISWAS, Presiding Officer

FORM—'H'

(See Rule—58)

MEMORANDUM OF SETTLEMENT

Representing the Employer	Representing the Workman
1. Shri M.K. Gupta, C.G.M.	1. Shri Mannan Mallick, Vice-President, R.C.M.S. Union.
2. Shri M.K. Singh, Dy. C.P.M.	2. Shri Anant Lal Jaiswara, the workman concerned.

SHORT RECITAL OF THE CASE

The workman named Anant Lal Jaiswara, General Mazdoor, Personal Number 01299675 was transferred from East-Bhuggatdih Colliery of Kustore Area to P.B. Area vide Office order dtd. 03-09-1997. He disobeyed the Order of Transfer and started absenting from his duties, for which he was issued with the Chargesheet dtd. 15/17-09-1999. A departmental enquiry was held into the aforesaid chargesheet in his presence by Shri Sunil Kumar, the Personnel Officer of East-Bhuggatdih Colliery, who held him guilty of the charges levelled against him.

The Rashtriya Colliery Mazdoor Sangh (RCMS) union raised an industrial dispute demanding the regularisation of Shri Anant Lal Jaiswara as Underground Munshi and the dispute was referred for adjudication at Tribunal No. 2, Dhanbad. The above case has been numbered as Reference No. 224/1998.

The management was contemplating imposition of penalty upon him on the matter of aforesaid chargesheet, when the concerned workman approached for a settlement along with his union representative. The dispute has been amicably settled on the following terms.

TERMS OF SETTLEMENT:

1. That the concerned workman Shri Anant Lal Jaiswara will be allowed to work at East-Bhuggatdih Colliery as General Mazdoor within 15 days from the date he will report for his duties.

2. That the period of absence from 03-09-1997 till the date of resumption of duty will be treated as leave without wages for continuity of service but he will not get any wages for the aforesaid idle period.

3. That the industrial dispute pending before Tribunal No. 2, Dhanbad in reference no. 224/1998 will be finalised by filing petition by the union and the concerned workman for passing "NO DISPUTE AWARD".

4. That in view of the aforesaid settlement no dispute of any kind exists between the management and the concerned workman.

For the Employers:	For the Workman:
(M.K. GUPTA) CHIEF GENERAL MANAGER	(KAMESHWAR PRASAD) SECRETARY, R.C.M.S. EAST BHUGGATDIH COLLIERY
(M.K. SINGH) DY. C. P. M.	(BHAILAL KEWAT) PRESIDENT, R.C.M.S. EAST BHUGGATDIH COLLIERY

WITNESSES:—

1. Signed Illigible Sunil (Kumar P.O.)

(ANANT LAL JAISWARA) THE WORKMAN CONCERNED

2. Signed Illigible
A. K. Shukla Office Supdt.

Copy to
The Advocate concerned.

नई दिल्ली, 13 दिसम्बर, 2002

का. आ. 57.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. को. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-II, धनबाद के पंचाट (संदर्भ संख्या 37/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-12-2002 को प्राप्त हुआ था।

[सं. एल-20012/762/99-आई.आर.(सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 13th December, 2002

S.O. 57.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 37/99) of the Central Government Industrial Tribunal-II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of B.C.C.L. and their workman, which was received by the Central Government on 11-12-2002

[No. L-20012/762/99-IR(C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2) AT DHANBAD

PRESENT

SHRI B. BISWAS,

PRESIDING OFFICER.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I. D. Act, 1947.

REFERENCE NO. 37 OF 1999

PARTIES: Employers in relation to the management of Katras Project Area of M/s. BCCL and their workman.

APPEARANCES:

On behalf of the workman	: None.
On behalf of the employers	: None.
State : Jharkhand	Industry : Coal.

Dated, Dhanbad, the 26th November, 2002

ORDER

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their order No. L-20012/762/99-I.R.(C-1), dated the 18th January, 1999.

SCHEDULE

" Whether the action of the management of Katras Project Area of M/s. BCCL in dismissing Sh. Ishwar Rai, Ex-Miners/Loader w.e.f. 1-4-93 from the services of the company on the ground of unauthorised absence from duty w.e.f. 4-5-92 is legal and justified ? If not, to what relief the workman concerned is entitled ?"

2. In this reference neither of the parties appeared before this Tribunal. It is seen from the record that the instant reference was received by this Tribunal on 2-2-99 and since then it is pending for disposal. Registered notices and show cause notices were issued to both sides but inspite of the issuance of notices they failed to turn up. In terms of Rules 10B of the I.D. Central Rules, 1957 submission of W.S. by the concerned workman within 15 days is a mandatory one. The concerned workman not only violated the said provision of the Rules but also did not consider necessary to give any response to the notices issued by this Tribunal. In natural course the question which has arisen is what will be the fate of the reference made by the Ministry for its disposal. The reference is made on the basis of dispute raised by the concerned workman/union. Naturally responsibility rests with the concerned workman/union to assist the court to dispose of the reference in issue on merit. In view of the decision reported in 2002(94) FLR 624 it will not be just and proper to pass 'No dispute' Award when both the parties remain absent. There is also no scope to answer the reference on merit in absence of any W.S. and available documents. There is no dispute to hold that when any reference is made it is expected to be disposed of on merit but when the parties do not take any step or do not consider even to file W.S. such expectation to dispose of the reference on merit comes to an end. It is not expected that for years together the Court will pursue the matter suo moto with the expectations for appearance of the workman inspite of issuance of registered notices. As per I. D. Act the workman excepting under provisions of Section 2A is debarred from raising any industrial dispute. The disputes are mainly raised by the Union for their workmen. These unions inspite of receiving notices did not care to appear before the Court for the interest of the

workman and as a result they have been deprived of getting any justice until and unless the attitude of the union is changed I consider that this uncalled for situation will persist. Definitely it is the duty of the Court to dispose of the reference on merit but it depends on the cooperation of both sides. Here the record will clearly expose that sufficient opportunities had been given to the workman/union as well as the management but yielded no result. This attitude shows clearly that the both sides are not interested to proceed with the hearing of the case for disposal on merit.

Under the facts and circumstances, I also do not find any sufficient reason to drag on the case for an indefinite period. Accordingly as there is no scope to dispose of the reference in question on merit, the same is closed.

B. BISWAS, Presiding Officer

नई दिल्ली, 10 दिसम्बर, 2002

का. आ. 58.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार करूर वैश्य बैंक लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/कम-लेबर कोर्ट, चेन्नई के पंचाट (संदर्भ संख्या आई. डी. नं. 650/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-12-2002 को प्राप्त हुआ था।

[सं. एल-12012/619/98-आई.आर.(बी.-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 10th December, 2002

S.O. 58.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 650/2001) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Karur Vysya Bank Ltd. and their workman, which was received by the Central Government on 09-12-2002.

[No. L-12012/619/98-IR(B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 13th November, 2002

Present : K. KARTHIKEYAN,

Presiding Officer

INDUSTRIAL DISPUTE NO. 650/2001

(Tamil Nadu Principal Labour Court CGID No. 177/99)

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Workman Sri G. Anantaramamurthy and the Management of Karur Vysya Bank Ltd., Karur.]

BETWEEN

The General Secretary : I Party/Claimant
Karur Vysya Bank Employees' Union,

AND

The Chairman, : II Party/Management
Karur Vysya Bank Ltd.

Karur.

Appearance:

For the Claimant : M/s. Hariparanthaman, V. Ajoy Khose & S.T. Varadharajalu, Advocates

For the Management : M/s.T.S. Gopalan & Co. Advocates

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned industrial dispute for adjudication vide Order No.L-12012/619/98/IR(B-1) dated 19-02-1999.

2. This reference has been made earlier to the Tamil Nadu Principal Labour Court, Chennai, where the same was taken on file as CGID No. 177/99. When the matter was pending enquiry in that Principal Labour Court, the Government of India, Ministry of Labour was pleased to order transfer of this case also from the file of Tamil Nadu Principal Labour Court to this Tribunal for adjudication. On receipt of records from that Tamil Nadu Principal Labour Court, this case has been taken on file as I.D. No. 650/2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 15.10.2001 with their respective parties and to prosecute this case further. Accordingly, the learned counsel on either side along with their respective parties have appeared and filed their respective Claim Statement and Counter Statement. The Xerox copies of the documents were also filed on either side.

3. When the matter was taken up for enquiry, a memo was filed by the counsel for the II Party/Management informing this Tribunal that the concerned workman Sri G. Anantaramamurthy is no more now and the L/R of the said deceased workman is not interested in prosecuting this case. Further the counsel for the II Party/Management represented that the dispute has become infructuous.

4. This industrial dispute has been raised by the I Party/Claimant the General Secretary Karur Vysya Bank Employees Union, Bangalore . espousing the cause of the workman Sri G. Anantaramamurthy by challenging the action of the II Party/Management Karur Vysya Bank Ltd. in terminating the services of the concerned workman as unjustified. The I Party/Claimant has also prayed for the

relief to that extent for passing an award by this Tribunal holding that the action of the Respondent/Bank management in terminating the services of the workman Sri G. Anantaramamurthy w.e.f. 19-5-98 as unjustified and consequently direct the Respondent to pay pension and other terminal benefits by granting the benefit of ten years qualifying service for pension with all revision and arrears and with costs.

5. The II Party/Management in their Counter Statement had objected to the claim made by the I Party/ Union on behalf of the concerned workman as alleged that the concerned workman due to his ill health from the years 1991 to 1998 was not available for work for a period of 336 days leave with wages and 637 days as leave on loss of pay and the medical board which examined the health of the concerned workman had declared the concerned workman unfit for work by July, 1996 itself and as there was no scope for any improvement in his health condition and as his service could not be utilised at all, after issuing a show cause notice on 16.4.98 and having received no reply from the concerned workman, the II Party/Bank Management was obliged to terminate the services of the concerned workman on 19-5-98 by offering three months salary in lieu of notice and such termination of the services of concerned workman was for a reasonable cause and was made *bona fide* in the interest of the organisation. It is further alleged that the concerned workman had put in effective service hardly for five years and had not rendered any useful service between 1991 and 1998 and hence the concerned workman is not entitled to any relief either by way of reinstatement or by way of pension.

6. When the matter was pending adjudication in this Tribunal, the concerned workman was reported to be dead. A memo has been filed by the counsel for the II Party/ Management stating that the Mother of the concerned workman Mrs. Chandra had addressed a letter to the Chairman of the Respondent/Bank informing that the concerned workman had expired on 25.2.2002 and that wanted settlement of his dues. It is further stated in that memo that on 29.5.2002 the said Mrs. Chandra has written another letter to the Petitioner Union with a copy to the Chairman of the Respondent/Bank stating that she was not interested in pursuing the case pending before this Hon'ble Tribunal and it should be closed and benefits due to him to be paid at the earliest. Along with that memo the xerox copy of those two letters also have been filed by the counsel for the II Party/Management.

7. After taking notice of that memo filed by the counsel for the II Party/Bank Management, the I Party/Claimant Union Assistant Secretary had filed a reply stating that the mother of the concerned workman wanted pension by way of settlement at the earliest and the copy of the letter dated 29.5.2002 written by her to the Union is also enclosed and that the Mother of the concerned workman wanted settlement of pension and without settling the pension benefit either directly paying to the mother of the deceased workman or by way of entering into settlement with the I Party/Union, the II Party/Management cannot file this memo to put an end to adjudication and the I Party feels that it is a fit case to be referred to Lok Adalat since the workman died during the adjudication and the matter has to be settled amicably in a sympathetic manner by paying pension/exgratia pension and that as there was no settlement under the Industrial Disputes Act, 1947 settling the issue under reference, the dispute has to be adjudicated on merits and the union also submits that the I Party/Union continues to espouse the cause to prosecute the dispute and hence, it is prayed that this Hon'ble Tribunal may be pleased to reject the memo filed by the II Party/Management.

8. After the hearing the counsel on either side and on perusal of the entire materials and records in this case, and after considering all the aspects in this dispute on merits, this Tribunal is passing this following: —

AWARD

9. The Point for my consideration is —

"Whether the action of the management of Karur Vysya Bank Ltd. in terminating the services of the workman Sri G. Anantaramamurthy is justified? If not to what relief is he entitled?"

Point: —

Subsequent to the filing of the respective plea of the parties to the dispute by Claim Statement and Counter Statement respectively and after filing the Xerox copies of the documents on either side, a memo has been filed by the learned counsel for the II Party/Management informing this Tribunal that the workman concerned in this industrial dispute raised by the I Party/Union as Claimant in espousing his cause, has expired, pending adjudication of this dispute by this Tribunal. The dispute has been raised by the Union challenging the action of the bank management in terminating the services of the workman Sri G. Anantaramamurthy. It is seen from the memo filed by the II Party/Management and also the Xerox copies of two letters written by the Mother of the deceased workman, that the mother of the deceased workman is not willing to pursue this dispute further as an L/R of the deceased workman through the I Party/Claimant Union. This has been admitted by the I Party/Union in their reply to that memo. Further, a perusal of the materials available in this case clearly shows that the order of termination of service against the concerned workman has been passed by the II Party/Management, taking into consideration of the ill-health of the concerned workman and having found that his service could not be utilised at all and having received no reply for the show cause notice issued to the concerned workman has obliged to terminate the services of the concerned workman on 19.5.98 by offering him three months salary in lieu of notice. From the materials available in this case, it is seen that the termination of the services of the concerned workman was for a reasonable cause made *bona*

fide in the interest of the organisation and there is no scope for this Tribunal to interfere with such order of termination passed by the II Party/Management against the concerned workman. From the very fact of the Mother of the concerned workman the only legal representative, who informed the I Party/Claimant Union, which raised this industrial dispute espousing . the cause of the concerned workman that she is not interested to continue the case clearly shows that the I Parly/Union have no *locus standi* to pursue the dispute further and a representative of the aggrieved deceased workman. Under such circumstances, it is found that the action of the management of Karur Vysya Bank Ltd. in terminating the services of the concerned workman Sri G. Anantaramamurthy is justified. Thus, the point is answered accordingly.

10. In the result, an Award is passed holding that the reference made by the Ministry in respect of the industrial dispute in question is answered in negative and also closed as the L/R of the deceased workman is not intend to prosecute this case through the Union I Party.

11. The L/R of the deceased workman is at liberty to make a claim for the monetary benefits validly due to the deceased workman from the II Party/Management, as per the provisions of Law. Rules and Regulations pertaining to this issue. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 13th November, 2002.)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined:—

On either side : None

Documents Exhibited:—

On either side : Nil

नई दिल्ली, 10 दिसम्बर, 2002

का. आ. 59.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कम-लेबर कोर्ट, कानपुर के पंचाट (संदर्भ संख्या आई. डी. नं. 38 ऑफ 1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-12-2002 को प्राप्त हुआ था।

[सं. एल-12012/645/98-आई.आर.(बी.-I)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 10th December, 2002

S.O. 59.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 38/1999) of the Central Government Industrial Tribunal/Labour Court, Sarvodaya Nagar, Kanpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 09-12-2002.

[No. L-12012/645/98-IR(B-I)]

AJAY KUMAR, Desk Officer.

ANNEXURE

BEFORE SRI R. P. PANDEY PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT SARVODAYA NAGAR, KANPUR

Industrial Dispute No. 38 of 1999

In the matter of dispute between—

Sri Krishna Murari Tiwari, Sh. Bare Lal Tewari F-750, Kamla Nagar, Agra.

AND

The Regional Manager

State Bank of India Region No. 1 Sanjay Place Agra.

AWARD

1. Central Government Ministry of Labour, New Delhi, vide its notification No. L/12012/645/98/IR(B-I) dated 5-3-99 has referred the following dispute for adjudication to this tribunal—

Whether the action of the management to treat Sri Krishna Murari Tiwari as voluntary abandoned the services w.e.f. 26.5.89 is justified or not ? If not what relief is workman entitled to?

2. In this case the statement of claim has been signed and filed by Sri Ram Din Tiwari, Vice President Rashtriya Mazdoor Congress Divisional Camp Office Firozabad on behalf of the workman Sri Krishna Murari Tiwari. On 25.7.2001 when the case was taken up for hearing the Vice President of the Union of workman made an endorsement on the statement of claim that the claim is not pressed and the case was reserved for giving award. While preparing the case for dictating award it came to my notice that no statement of claim was filed by the concerned workman, hence vide order dated 27.7.2001 concerned workman was directed to file statement of claim. In pursuance of order dated 27.7.2001 registered notice was sent at the address of the concerned workman fixing 1.10.2001 for filing of statement of claim but that notice returned back undelivered with the postal remark that the addressee has left the house.

3. In view of above, I have no hesitation in holding that the concerned workman is not interested in contesting the case further in view of the fact that the Vice President of the Union has made an endorsement on the statement of claim filed by him that the claim of the workman is not pressed thus I have been left with no option but to hold that the concerned workman is not entitled for any relief in pursuance of the reference made to this tribunal.

4. Reference is answered accordingly.

R. P. PANDEY, Presiding Officer

नई दिल्ली, 10 दिसम्बर, 2002

का. आ. 60.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नोर्दर्न रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-कम-लेबर कोर्ट, लखनऊ के पंचाट (संदर्भ संख्या आई. डी. नं. 127/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-12-2002 को प्राप्त हुआ था।

[सं. एल-41011/10/2001-आई.आर.(बी.-I)]
अजय कुमार, डैस्क अधिकारी

New Delhi, the 10th December, 2002

S.O. 60.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. No. 127/2001) of the Central Government Industrial Tribunal/Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Northern Railway and their workman, which was received by the Central Government on 9-12-2002.

[No. L-41011/10/2001-IR(B-I)]
AJAY KUMAR, Desk Officer

अनुबन्ध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ

रुद्रेश कुमार

पीठासीन अधिकारी

औद्योगिक वाद सं. 127/2001

अभिदेशन संख्या-एल-41011/10/2001/आई. आर. (बी.-1) दि. 8-8-2001

डिवीजनल आर्गेनाइजिंग सेक्रेटरी

उत्तर रेलवे कर्मचारी यूनियन (रजिस्टर्ड)

119/74, क्वार्टर नं. 61, नसीमाबाद,

कानपुर-208001

(विनोद एवं अन्य)

बनाम

डिवीजनल सुप्रीटेंडेंट इंजीनियर-III

उत्तर रेलवे, इलाहाबाद

अवार्ड

औद्योगिक वाद अधिनियम, 1947 (1947 का 14) की धारा 10 की धारा 2(ए) एवं उपधारा (1) के उपबंध (घ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार के अन्तर्गत श्रम मंत्रालय द्वारा आदेश संख्या-एल-41011/10/2001/आई.आर. (बी-I), दिनांक 8-8-2001 के द्वारा यह औद्योगिक विवाद डिवीजनल ऑर्गेनाइजिंग सेक्रेटरी, उत्तर रेलवे कर्मचारी यूनियन (विनोद एवं अन्य) एवं डिवीजनल सुप्रीटेंडेंट इंजीनियर-III, उत्तर रेलवे, इलाहाबाद के मध्य विनिर्णय हेतु प्रेषित किया गया है।

विनिर्णय हेतु संदर्भ निम्नलिखित है :—

"Whether the action of the management of Northern Railway, Allahabad in not regularising Shri Vinod Kumar from July, 1995, Shri Bharat Singh from July, 1995, Shri Ashok Kumar from January, 1996, Shri Chandrika Prasad Chaurasiya from April, 1996 and Shri Ramesh Chaurasiya from April, 1996 is justified? If not, what relief are these workmen entitled"?

2. संदर्भादेश में डिवीजनल सुप्रीटेंडेंट इंजीनियर-III, उ.रे. इलाहाबाद को सेवायोजक के रूप में दर्शित किया गया है। श्रमिक की ओर से दावा-पत्र दाखिल किया गया है जिसके पैरा चार में डेस्क ऑफिसर के विरुद्ध अनावश्यक टिप्पणी की गई है। संदर्भादेश में इस तथ्य का उल्लेख नहीं है कि श्रमिकों को किस विभाग/कार्यालय में नियमित किया जाना है तथा वर्तमान में वह किस स्थान पर कार्यरत है। इन तथ्यों का कोई विवरण दावा-पत्र में नहीं दिया गया है।

3. संदर्भादेश के अनुरूप डिवीजनल सुप्रीटेंडेंट इंजीनियर-III, उ.रे., इलाहाबाद को नोटिस भेजी गई। उन्होंने अपने पत्र संख्या-डब्ल्यू./लिट. इंजी./आई. डी./127-2001/विनोद/डी.एस.ई.-3, दिनांक 5-8-2002 द्वारा सूचित किया कि यह प्रश्नगत प्रकरण उनके कार्यालय से संबंधित नहीं है।

4. स्पष्टत: विवरण के अभाव में किसी अन्य को सेवायोजक नहीं माना जा सकता और न तो अग्रेतर कार्यवाही संभव है। अत: वर्णित परिस्थितियों में विवाद को गुण-दोष के आधार पर निर्णीत करना संभव नहीं है तथा "नो क्लेम अवार्ड" के रूप में निर्णीत करते हुए कार्यवाही समाप्त की जाती है। श्रम मंत्रालय नया संदर्भादेश भेजने के लिए स्वतंत्र है।

दिनांक : 29-11-2002 रुद्रेश कुमार, पीठासीन अधिकारी

लखनऊ

नई दिल्ली, 11 दिसम्बर, 2002

का. आ. 61.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टैण्डर्ड चार्टेड ग्रिंडलेज बैंक लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. II, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी. 2/49/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-12-2002 को प्राप्त हुआ था।

[सं. एल-12011/37/2000-आई.आर.(बी.-I)]
अजय कुमार, डैस्क अधिकारी

New Delhi, the 11th December, 2002

S.O. 61.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-2/49/2001) of the Central Government Industrial Tribunal/No.II.Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Standard Chartered Grindlays Bank Ltd. and their workman, which was received by the Central Government on 10-12-02.

[No. L-12011/37/2000-IR(B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No.II) MUMBAI

PRESENT

S.N. SAUNDANKAR

PRESIDING OFFICER

REFERENCE NO.CGIT-2/49 OF 2001.

EMPLOYERS IN RELATION TO THE MANAGEMENT OF GRINDLAYS BANK, MUMBAI RENAMED AS STANDARD CHARTERED GRINDLAYS BANK LTD.

The General Manager (P&A),

Standard Chartered Grindlays Bank,

90,M.G. Road,

Fort, Mumbai-400001.

AND

THEIR WORKMEN

The General Secretary,

Grindlays Bank Employees Union,

90, M.G. Road,

Fort, Mumbai 400001.

APPEARANCES :

FOR THE EMPLOYER : MR. K. T. RAI
Representative.

FOR THE WORKMEN : MR. P. N. SUBRAMANYAN
Representative.

MUMBAI DATED 29TH OCTOBER 2002

AWARD

The Government of India Ministry of Labour by its Order No.L-12011/37/2000-IR(B.I.) dtd.24th April 2001and 9th May 2001 in exercise of the powers conferred by clause (d) of Sub-section (1) of Section 10 of the Industrial Disputes Act have referred the following dispute to this Tribunal for adjudication:

Whether the action of the management of standard Chartered Grindlays Bank to transfer the Award Staff to RMC located at Byculla in Mumbai is justified? If not what relief is the workmen entitled?

2. By statement of Claim (Exhibit-7/7A) the Grindlays Bank Employees Union pleaded that the management Bank is the oldest foreign Bank operating in India having its eight branches in Mumbai.It is a profit making bank and consistently increasing work load ensuring increased profitability with the objective to multiply profits, resultantly number of workmen employed since 1963 remained static. It is averred in the year 1973 bank resorting to arbitrary mechanisation reduced the number of workmen by about 400 despite continued growth and progress which was resented by the union and consequently a dispute was referred by the Government of India to National Industrial Tribunal Mumbai for adjudication and in the Award dtd. 29-8-85 the Tribunal had imposed a condition on the bank for resorting to further mechanisation/computerisation the most important being maintenance of the frozen workmen strength and that the bank had agreed to abide by the directions in the Award and maintain the strength of 3376 till year 1994 and thereafter bank resorted to excessive rationalisation measures by hubbing operations centre-wise and later-on country-wise causing illegal surplus by reducing the number of workmen in each department and branch by adopting unfair labour practice violating the provisions of the Industrial Disputes Act. It is pleaded in vacant permanent posts the bank engaged temporary employees having stopped recruitment since the year 1994 and simultaneously the bank resorted to contracting out jobs and thereby the bank reduced the number of permanent workmen to 1665 by the year 2000 and that in Mumbai the permanent workmen strength which was 809 in January'85 was reduced to 460 by the year 2000. It is contended by adopting exit policy the jobs in the vacant posts were out-sourced and entrusted to employees engaged as temporary workmen and that the permanent workmen were denied work under the guise of transfer and they were shifted to altificial department named Resource Management Centre (herein after referred to as R.M.C) and were made to sit idle and in this manner the surplus was created and the workmen shifted there suffered mental strain besides being humiliated, with ultimate aim to coerce the workmen to quit the job. It is pleaded, workmen illegally treated as surplus are kept seperately with the objective to facilitate threir exit from service of the bank which policy was opposed by the union by sending letters to the bank. It is averred RMC is a camouflage department set up as a pool or cargo for alleged redundant/surplus employees and that when in the year May 2001 bank announced VRS to the workers who refused malafide transfer, were given benefit thereof for outsourcing contract employment. By way of anendment the union contended the bank resorted to VRS/ ERS/ESP to entrust the contract employment in place of permanent jobs and that the workmen transferred to RMC

were kept idle thereby frustrated,which is violation of provision of Section 9A of the ID. Act. It is averred out of 400 employees 250 workmen have opted for separation from service and that by the end of October 2001 the bank has transferred about 90 workmen to RMC out of which 60 workmen have opted for seperation from the service of the bank which is indicative the bank entrusted the schemes as above with malafide intention to reduce the permanent strength of the workmen and for outsourcing contract employment. It is contended that bank set up the RMC as a malafide measure and that the permanent workers transferred there which situate in the rental premises at Byculla since May 2000 not allotted regular normal work to them nor any regular work exists, It is pleaded RMC is not a department of any branch, no banking activities take place, no administrative work of the bank is carried out there, therefore the transfer is abnormal as the workmen will be deprived of their right to work, status is changed with the employer refusing to allot work which indicative to show the workmen have become surplus labour created illegally and for creation of surplus labour the bank has transferred the workmen to RMC which is malafide, adopting unfair labour practice. It is therefore the contention of union that the action of the bank to transfer the Award staff to RMC is illegal and unjustified, and consequently bank be prohibited to do so.

3. Management Bank resisted the claim of union by filing Written Statement (Exhibit-12) contending that the transfer of Award staff is bonafide, done with a view to reorganise the banks business and that RMC is one of the branch /department/segment/unit of the bank, created with a view to upgrading the bank, its customer service and the like confirming to international status in the business, interest and over-all interest of the bank and for that, the bank is permitted to mechanise, rationalise reorganise its business and the like without however, resorting to retrenchment of workmen. It is pleaded bank has no any intention to resort to retrenchment of workmen in near forseable feature and that the bank announced in the year 1996/1999/2001 voluntary retirement schemes offering liberal monetary benefits to employees in the category of Award staff and that they have availed the monetary benefits with free will and volition. Management bank denied that VRS announced amounted to exit policy thereby, bank has not violated any provisions of the Industrial Dispute Act nor the directions of the Tulpule Award of the year 1985. It is averred, RMC is to be recognised as a proactive service provider to all segments in facilitating identification and management of any staff, mismatches in terms of numbers and skills Bank denied that they created RMC as illegal surplus of workman. It is pleaded the objective of the bank in announcing VRS is not to goad the workmen sitting idle in RMC in Mumbai, and that it is not an artificial department. Bank denied the workmen transferred to RMC are sitting idle without any work and that according to the bank the objective is reskilling and training the workmen. It is further the contention of bank that the workmen transferred for training to RMC have blatantly refused to adhere to comply with the bonafide transfer orders, therefore they were chargesheeted for various acts of Commission and ommission on their part amounting to 'major misconduct'. It is pleaded that the reference is not maintainable in the absence of existence of/or apprehension of any substantive industrial dispute within the meaning of Section 2K of the Act and that the Central Government failed to exercise its powers vested in the provisions of Sub-section 1 (d) of Section 10 of the Act with bonafide proper application of mind. It is contended, rule regarding transfer is an express term of employment of each and every workman therefore, there is no illegality in transferring the Award staff to RMC Consequently it is contended transfer being justified the reference being devoid of substance be dismissed with costs in limine.

4. Union by Rejoinders denied the averments in the Written Statement reiterating the recitals in the Statement of Claim and that the bank by way of reply refuted the contentions therein.

5. On the basis of the pleadings issues were framed at Exhibit-14. In that context union filed affidavits in lieu of Examination-in-Chief of 22 witnesses viz. Mr. Urban D'Cruz; Mr. Navnath Battaram Shirke; Mr. Jaywant Laxman Chavan; Mr. Anant Vishnu Pendurkar; Mr. Kailas Tribhuvan Kahar; Mr. Leo J. Vaz; Mr. Ashok Kanchan; Mr. Nazerath Gregory Rebeiro; Mr. Jacob Falcon; Mr. S. Vishwanathan, Mr. R.Y. Apte; Mr. Shashank Kamalakar Barve; Smt. Preeti Raghunath Mandrekar; Mr. Subhash T. Sawant Mr. Pandurang Ramkrishna Nerurkar; Mr, Narendranath K, Shriyan; Mr. Jaydeep M. Surti; Mr. Nilesh M Rathod; Mr. Laxman V. Subhedar; Mr. Inderdhwaj D. Pandey; Mr. Nagesh Dattatraya Bhise & Mr. Purshottam Shanbhag vide (Exhibit-57, 58, 59, 60, 61, 67, 68, 69, 70, 71, 72, 79, 80, 81, 82, 83, 84, 85, 86, 87, 90, 96) in support of their case and closed oral evidence vide purshis (Exhibit-102). The management bank filed affidavit of Assistant Manager Mr.Shete and Manager Mr. Andrian Andrade vide (Exhibit-105 & 111) and management closed evidence vide purshis (Exhibit-112).

6. Union filed written submissions with copies of rulings (Exhibit-118, 119, 122, 123, 128) and the management Bank (Exhibit-120, 121, 125, 126). On perusing the voluminous record as a whole filed by both sides, written submissions and hearing both the representatives at length, I record my findings on the following issues for the reasons stated:—

Issues	Findings
1. Whether the reference is not maintainable as averred in para.3 (b) of the Written Statement?	Maintainable
2. Whether this Tribunal has no jurisdiction to adjudicate the reference as averred in para.5 of Written Statement?	Has jurisdiction

3. Whether the action of the management of Standard Chartered Grindlays Bank to transfer the Award staff to RMC located at Byculla Mumbai is justified?	Not justified.
4. What relief the workmen are entitled?	As per order below.

REASONS

7. At the threshold the Learned Representative for the bank Mr. Rai inviting attention to the written submissions and Written statement paras.3 & 5 urged with force that the reference is not maintainable in-as-much as none of the service conditions of the transferees have been altered thereby attracting the provisions of Section 9A of the Act and the workmen transferred to RMC will be ultimately declared surplus/retrenched is an apprehension. He submits provisions of Sub-Section (1) of Section 10 of the Industrial Disputes Act postulates two requisites which in turn operates as a condition precedent for making a reference by the appropriate Government (i) existence of any industrial dispute or apprehension of any industrial dispute within the meaning of Sub-section (k) of Section 2 (ii) on fulfilment of those two requisites the appropriate Government would then only be empowered to refer any dispute to the Tribunal. However in the instant case the Government has not adduced any special or good reasons or new circumstances in persuading or complying it to form an opinion to make the reference and therefore the appropriate Government made a reference without any apptication of mind and therefore it is incompetent and without jurisdiction. On the otherhand the Learned Representative for the union Mr. Subramanyan submits that the Division Bench of the Hon'ble Bombay High Court in Writ Petition No. 419 of 2001 dtd. 7-3-01 had directed the Central Government to refer the dispute raised by the union to the appropriate industrial tribunal within the specific time and had further directed on receipt of reference from the Central Government the Tribunal shall decide the reference within the stipulated period. Therefore he submits in view of the directions it does not lie in the mouth of the management representative that the dispute raised before the Tribunal is incompetent for the reasons mentioned by way of repetitions in the written submissions. He submits industrial tribunals are not fettered by limitation and that adjudicator has jurisdiction to investigate disputes and that scope of an adjudication under the Act is much wider than that of an Arbitrator in making an Award. He urged with force that once the reference is made by Government Tribunal has to take the pleadings of the parties and draft issues into consideration. It is not open to the Tribunals to fly off at a tangent and disregarding the pleadings to reach any conclusions. According to Mr. Subramanyan the transfer orders issued to report to RMC is malafide unfair labour practice and illegal and that issue is an industrial dispute and that Government has rightly exercising its powers, referred the same to the Tribunal. He has relied on the decision of the Supreme Court in the case of Avon Services (Production Agencies) 1979-I LLJ page-1, wherein it is held :-

> "Section 10 (1) of the Act confers power on the appropriate Government to refer at anytime any industrial dispute which exists or is apprehended to the authorities mentioned in the section for adjudication. The opinion which the appropriate Govemment is required to from before referring the dispute to the appropriate authority is about the existence of a dispute or even if the dispute has not arisen, it is apprehended as imminent and requires resolution in the interest of industrial peace and harmony. Section 10 (1) confers a discretionary power and this discretionary power can be exercised on being satisfied that an industrial dispute exists or is apprehended, There must be some material before the Government on the basis of which it forms an opinion that an industrial dispute exists or is apprehended. The power conferred on the appropriate Government is an administrative power and the action of the Government in making the reference is an administrative act. The formation of an opinion as to the factual existence of an industrial dispute as preliminary step to the discharge of its function does not make it any the less administrative in character. Thus, the jurisdictional facts on which the appropriate Government may act are the formation of an opinion that an industrial dispute exists or is apprehended which undoubtedly is a subjective one, the next step of making reference is an administrative act. The adequacy or sufficient of the material on which the opinion was formed is beyond the pale of judicial scrutiny. If the action of the Government in making the reference is impugned by a party it would be open to such a party to show that what was referred was not an Industrial dispute and that the Tribunal had no jurisdiction to make the award but if the dispute was an industrial dispute, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for Government to decide upon, and it will not be competent for the court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in us opinion, no subsequent material before Government on which it could have come to an affirmative conclusion on those matters".

The Government decision is based on some material to form the opinion on the existence of an industrial dispute which decision is not open to scrutiny for this Tribunal in view of the decision of the Hon'ble Court-referred to above,

8. Mr. Rai argued that the dispute confines in transferring the services of 35 workmen in the Award staff

to RMC as contained in the order of reference dated 24/4/01, therefore he submits tribunal have no jurisdiction to expand the scope of inquiry beyond the terms of reference. He submits after the filing of the reference some workmen are transferred to RMC and under the administrative control of the Area Manager Employee "Relations (West) (herein after referred to as' ('MER') which cannot be considered by the tribunal since it was not incorporated in the reference. He has relied on Delhi Cloth and General Mills Company Limited V/s. Their Workmen and Ors. 1967 I LLJ Pg 427. Their Lordships observed as follows :—

> "the tribunal is not free to enlarge the scope of the dispute referred to it but must confine its attention to the points specifically mentioned and anything which is incidental thereto."

Relying on the said decision Mr. Rai submits that further transfer is not incidental as held above, therefore cannot be considered by this Tribunal. Mr. Subramanyan at this juncture submits that the Hon'ble Bombay High Court in Writ Petition No.359 of 2002 dt. 4th March 2002 observed that the union had challenged the policy of the action of the management to transfer the Award staff to RMC and that from the order of reference the Tribunal was not confined to any number of workmen and that union had challenged as whole the action of the management to transfer the Award staff to RMC, therefore the tribunal should adjudicate upon the issue as policy/action of the management to transfer the Award staff to RMC. Therefore according to Mr. Subramanyan in view of the said decision, now Mr. Rai cannot say that the reference pertains to limited workmen and submits that this Tribunal has to look to that as action or policy as such of the management. Provisions of Section 10 (4) of the Industrial Disputes Act lays down the process of adjudication and it is to be confined to the points in dispute referred and matters incidental there to. As per Webster's New World Dictionary' 'incidental' means :

> "happening or likely to happen as a result of or in connection with something more important; being an incident; casual; hence, secondary or minor, but actually associated."

Initially there was transfer of 35 workmen however later on again some transfers were effected which is certainly 'incidental' to the dispute of reference. Their Lordships of Supreme Court in Ajaib Singh V/s. The Sir - hind Co-operative Marketing cum Processing Service Society Ltd. & Anr. JT 1999 (3) SC 38 observed :

> "The Act was brought on the statute book with the object to ensure social justice to both the employers and employees and advance the progress of industry. It is a piece of social legislation providing and regulating the service conditions of the workers."

In Hindustan Antibiotic. Ltd. V/s. The Workman AIR 1967 SC 948 Their Lordships of the Apex Court pointed out :—

> "The Act is intended not only to make provision for investigation and settlement of industrial disputes but also to serve industrial peace so that it may result in more production and improve the national economy. The provisions of the Act have to be interpreted in a manner which advances the object of the legislature contemplated in the statement of objects and reasons. While interpreting different provisions of the Act, attempt should be made to avoid industrial unrest, secure industrial peace and to provide machinery to secure that end. In dealing with industrial disputes the courts have always, emphasised the doctrine of social justice which is founded on basic ideals of socio-economic equality as enshrined in the preamble of our Constitution. While construing the provisions of the Act, the court have to give them a construction which should help in achieving the object of the Act."

Further Their Lordships in Niemla Textile Finishing Mills Ltd. & Ors. V/s. Second Punjab Tribunal and Ors. 1957 I LLJ Pg-460 observed :

> "The industrial-courts are to adjudicate on the disputes between employers and their workmen, etc. and in the course of such adjudication they must determine the "rights" and "wrongs" of the claims made, and in so doing they are undoubtedly free to apply the principles of justice, equity and good conscience, keeping in view the further principle that their jurisdiction is invoked not for the enforcement of mere contractual rights but for preventing labour practices regarded as unfair and for restoring industrial peace on the basis of collective bargaining. The process does not cease to be judicial by reason of that elasticity or by reason of the application of the principles of justice, equity and good conscience."

Therefore going through the decisions referred to above hardly can be said that this Tribunal cannot look to the subsequent incidental events and that to my view, policy/action as such will have to be considered. Consequently I find no substance in the submission of Mr. Rai for the management. It is therefore clear that this Tribunal has jurisdiction to entertain and decide the reference being competent and maintainable. Issues Nos. 1 & 2 are answered accordingly.

9. Now point crops on whether the action of the management bank to transfer the Award staff to RMC is justified or not? On perusal the record it is clear that the bank had initially transferred 35 workman to RMC and during the pendency of the matter about 60 were transferred to AMER. According to the bank employees were

transferred on exigency ground and that bank is in the best position to judge how to distribute its man power and whether a particular transfer can be avoided or not. Bank is entitled to decide on consideration of the existence of banking business whether the transfer of an employee should be made to a particular branch. According to Assistant Manager (Resource Management Centre) Mr. Shete transfer is an express term of employment of all the workmen in the Award staff and that bank by way of reorganisation of business created a new support service segment in the form of 'RMC' in the year May'2000 initially at Agripada then Byculla /Mumbai with intention to play a pivotal role as proactive centre for assessment of their skills, training and subsequent redeployment within the bank in its various branches/units departments and segments. He disclosed that 35 workmen in the Award staff alongwith Executives came to be transferred to RMC in September 2000 and that the transfer of service of workman is entirely and fully consistent with their express contract of employment. He stated that in the year 2001 bank introduced voluntary schemes such as VRS /ERS/ ESS in furtherance of reorganisation of business and some employees free will and volition settled their claims and dues which has no concern with the transfer to RMC. Mr. Andrade whole time Manager, Employee Relations stated that in order to keep pace with the efficient working and overall business interest the bank was required to reorganise the business from time to time and as a measure of reorganisation of business bank created a section under the administrative control of the Area Manager Employee Relations (West) in the month of September 2001 which was initially started in Agripada and total 60 workmen in the Award staff came to be transferred to this section. Both the witnesses as above disclosed that some of the employees transferred to RMC/AMER did not report to duty which tentamounts to disobedience of lawful orders of the bank amounting to 'major misconduct' and consequently they were charge-sheeted. Both the witnesses pointed out that the transfer was in the interest of the banking business and therefore bonafied and consequently bank is fully justified.

10. The Learned Representative of the bank Mr.Rai rightly urged that transfer orders being a Managerial prerogative ought not to be in the normal circumstances interferred with and that it is within the Managerial discretion of the employer to reorganise and arrange his business in the manner he considers best and that management is in the best position to judge how to distribute its man power. He further rightly urged that industrial tribunals should be very careful before they interfere with the orders made by the banks in discharge of their Managerial functions for which reliance can be had to M/s. Parry & Co.Ltd. V/s P.C. Pal & Ors 1970 II LLJ pg.429; Canara Banking Corporation Ltd. V/s. U. Vittal 1963 II LLJ (SC) 354; Syndicate Bank Limited V/s. Their Workmen 1965-66 28 FJR SC pg 275..Nikhil Chandra Dey & Ors V/s Steel Authority of India Ltd. & Ors. 1988 II CLR HC-CAL page.99.

11. It is to be noted that Their Lordships of Hon'ble Supreme Court in Canara Banking Corporation and Syndicate Bank relied and referred to above clearly ruled that if however, it is found that the order of transfer is made malafide or for some ulterior purpose industrial tribunal should interfere and set aside such orders if there is sufficient and proper evidence in support of the findings however such a finding should not be reached capriciously or on flimsy ground. Let us now scrutinise the evidence on record in this context. Witness examined by the Union viz. D'Cruz who was appointed as a clerk in 1967 disclosed in short that management entrusted entire despatch of materials to contractor A-1 Couriers and because of this outsourcing of work the number of workers were reduced and added that contractor is functioning within the premises at Mahatma Gandhi road. He further disclosed that he was transferred to RMC in May/Sept. 2001. Where he is sitting idle as no work exists/available end that the same position is with other colleagues, He pointed out that the transfer was resisted but in vain. He denied that his services were due to exigencies of work and that it was justified. Shirke who joined as cash van driver in 1991 deposed to the effect that his work is being given to one contractor 'Top Securities, G-IV Securities' and that the place i.e. RMC where he is transferred there is no work. He denied that his transfer was genuine. Chavan peon engaged in 1988 testified that his entire despatch of material has been entrusted to contract couriers i.e O.M couriers end that he has no work in RMC where he is transferred and that he is sitting idle alongwith others. Pendurkar an Air condition plant helper engaged in 1966 pointed out that he reported to RMC on 16th June 2000 however his work has been entrusted to contractor NAT Air Condition Engineering and that he is sitting idle in RMC as no work has been alloted to him. Kahar a temporary sub-staff engaged in 1991 disclosed that he alongwith temporary staff through union had raised dispute in Ref.2/47 of 1993 & 2/26 of 1995 and their demands were upheld by the Tribunal by the Award dtd. 30/6/97 and that by virtue of the Award his services were regularised however he was transferred to RMC Byculla and that his work of cleaning/ sweeping has been given to contractors Omkar Enterprises/ Vishal Darshan Enterprises Centre Hospitality services and that the place where he transferred at RMC he is sitting idle. Vaz engaged as clerk-cum-typist in 1966 deposed that bank engaged 20 persons through United Courier Services and that the bank attracted workmen for early exit and that fear was created telling that RMC will be shifted to a distant place and the workmen not accepting to early exit schemes will have to face hardship and that bank compelled many unwilling workmen to opt for exit from service. Kanchan temporary peon engaged in 1989 a beneficiary of the Award referred to above, deposed to the effect that the job performed by them has been entrusted to contract labour-Omkar enterprises and that he was transferred to RMC a camp meant to humiliate and frustrate the workman

and pave way to workmen to accept the banks exit schemes and added that he is a victim of banks early separation scheme. He disclosed that he took VRS out of frustration, Ribeiro clerk-cum-typist recruited in 1964 pointed out that RMC is an artificial department where employees are not given any work nor there exists any work and added that the bank outsourcing the jobs to contract labour and to cover up the illegal surplus they have been dumped there, on the pretext of transfer. Falcon a clerk-cum-typist engaged in 1966 also deposed to the effect that Transfer-to RMC has been totally misused to achieve the ulterior purpose to create fear psychosis among the employees frustrate them and create an atmosphere to compel the employees to exit from the services and that bank has achieved its objective with large number of workmen opting for the banks exit schemes while hundreds of permanent jobs have been converted into contract employment through out-sourcing. Vishwanathan temporary sub-staff on ad-hoc basis in 1982/1992 beneficiary of the Award disclosed that transferring him to RMC, his work has been given to contract and that he is sitting idle alongwith his colleagues transferred there. Apte clerk recruited in 1967 pointed out that he was working as out-put control known as Daily Transaction list and now am as be 'journal of which work is concerning to scrutiny and verification of entire digital operations of the bank has been given to the contractors viz. Scope International Private Limited and that to reduce the permanent employees the bank introduced ERS and that transfer to RMC is its outcome. He disclosed that since transfer to RMC, he is sitting idle alongwith his colleagues. Barve clerk engaged in 1992 disclosed that his work of outward clearing and collection of up country cheques were allotted to Talisman Consultants Private Limited and that bank introduced exit schemes in order to reduce the strength of permanent employees and that RMC is created to convert into contract employment thereby job insecurity hanging over the head like a sword. Smt. Mandrakar a clerk cum cashier engaged in 1992 stated that bank appointed some workers on contract to perform the work in the bank transferring the permanent workmen to RMC. Sawant cleark-cum-typist engaged in 1964 also deposed to the effect that workman who do not opt for the exit schemes have been shunted to RMC and compelled to accept exit schemes announced by the bank in the year 2001 and that transfer to RMC is abnormal and malafide intended to achieve ulterior objectives of the bank and that he has been falsely chargesheeted. Nerurkar a clerk-cum-typist recruited in 1961 pointed that as the Assistant Secretary of the Union five times he had visited RMC however he found no work exists there. Shriyan AC plant helper recruited in 1988 has also pointed out that his work has been handed over to contractor and now he has no work in RMC and added that there is no centralised Air-conditioning plant and that bank has not appointed any technician/operater in RMC and that under the service conditions he is required to work under the supervision of a technician and that his transfer to RMC is for deprivation of work and engagement of contract labour. Surti a Peon engaged in 1988, Rathod temporary peon on adhoc basis engaged in 1989 a beneficiary of the Award so also Subhedar cleaner-cum-sweeper and Pandey temporary peon engaged in 1988 also disclosed on their agony on account of transfer to RMC. Mr.Shanbhag a member of the Managing Commitee of the Union who retired in 1999 pointed out on out sourcing of work through contractor introducing exit schemes and that transfer has direct nexus to that. Thus witness referred to above in various categories/cadres sections/departments/ units consistently pointed out that the bank with ulterior motives transferred the workmen in majority to RMC and that the transfer is malafide and totally unjustified.

12. Malafide has been explained in the case of Rajendra Roy reported in 1993 (i) SCC 148 and the relevant portion quoted in the case of Gulam-ud-din 2001-I LLJ at pg.95 of para 6 which reads as follows:-

"It may not be always possible to establish malice in fact in case, it is possible to draw reasonable inference of mala-fide action from the pleadings and antecedent facts and circumstances. But for such inference there must be firm foundations of facts pleaded and established."

According to the bank Tulpule Award 1985 is binding on the bank. This Award permits transfer only centre-wise as seen from para 120 (4) pg. 188 filed at (Ex-38). In the case in hand, the transfer was in large number and that it is significant to note that Mr.Shete is not in a position to point out as to wheather such mass transfer occured at any time, which indicates for the first time such transfer was made. The Learned Representative Shri Subramanyan at this juncture in so far as facts and circumstances referred in the Judgement mentioned supra inviting attention to the order at (Exhibit 40) dtd. 10-4-02 submit with force that this Tribunal on the to application of the union had directed the bank/furnish information as to how many workers were transferred to RMC, their names branches, work alloted to them and done by them, information as regards engaging temporary and contract labourers, and also information in respect of surplus workmen determined by the bank in the light of the prayer made in application at Serial Nos. 2 to 5. He argued that bank did not furnish the same though many witnesses were examined by the union and the written submissions filed by the bank for which adverse inference could be drawn that the bank deliberately concealed the information as it was against it. For this he has relied on the decision of the Apex Court in the case of Food Corporation of India reported in 1996-II LLJ 920 wherein Their Lordships observed:—

> "That such primary documents should be and are available with the Corporation, cannot be denied, in view of the facts highlighted or stated by this Court in the carlier judgment in C. A. No. 1055 (NL) /81. The

Tribunal abdicated its duty in not taking effective or proper steps to obtain the said crucial and primary documents. In the circumstances, an adverse inference was called for, against the Corporation for non-production of vital primary documents."

Further in the case of H, B. Singh V/s, Reserve Bank of India 1986-I LLJ 127 it is observed:—

"The appellant wanted the relevant records to be filed but they were not produced. Grounds 18 to 28 of the special leave petition make mention of this plea of the appellant. These grounds are met by the first respondent bank in their counter affidavit filed in this Court by stating that "when the matter was before the Industrial Tribunal, the registers in question were filed in another case before the Industrial Tribunal-cum-Labour Court and produced in that Court. However, I submit that now the attendance register has been destroyed but the payment registers are available with the respondent-bank as proof of the number of days on which the appellant worked." In the absence of any evidence to the contrary, we have necessarily to draw the inference that the appellant's case that he had worked for more than 240 days from July, 1975 to July, 1976 is true."

13. Another circumstance Mr. Subramanyan points out in so far as no work exists and no work is allotted to any of the transferees to RMC and a section under the control of AMER which is an artificial creation and that RMC is a camouflage department set up as a pool or a case for surplus employees, the union had requested Mr. Andrade during the pendency of reference vide letter dtd. 27th November, 01 (Ex-38/90) to get the facts verified, put forth before the RLC (C) on the RMC however bank did not respond to that. The union had also requested the Tribunal vide application (Ex-103) dtd. 25-7-02 which was opposed and after was rejected the request was made to appoint Commissioner to inspect the work if any, done vide application (Ex-115) which was also opposed by bank and hence came to be turned down. However fact remains that the union made endeavour to bring the factual position before the tribunal but the management bank strongly opposed, which speaks the inner corner of the bank that they are at fault which throws light in the matter.

14. Mr. Subramanyan inviting attention to the voluminous record contended that the temporary workman who were regularised by virtue of Award paased by the Tribunal have been transferred to RMC with intention to dump them so that due to frustration they would opt for exit schemes thereby his work could be given on contract, which has Proximate nexus with the transfer. On perusal of the record it is seen witnessess examined among the beneficiary of the Award hava been transferred to RMC and that according to them, no work exists nor any work is allotted to them and that management is not in a position to throw light on the same. Therefore, I find force in the abovesaid submissions of Mr. Subramanyan.

15. By way of cross examination almost all the employee-witnessess no doubt clearly admit that thay get wages regularly and that by way of outsourcing no retrenchement has taken place and their appointment letter point out on the condition of transfer and further admitted they are aware that the Awards, industrywise settlement enable the bank to reorganise its business introducing automation, reorganisation, standardisation etc, without however taking recourse to retrenchment of workmen. At this juncture the Learned Representative of the bank Mr, Rai urged with force that the transfer clause being unfettered, unqualified and an express term of contract of employment. The bank in order to reorganise which is an ongoing process effected transfers, therefore that cannot be questioned. Assistant Manager Mr. Shete who joined as clark in 1971 and was transferred from one branch to another and from one department to another department disclosed that large transfer had taken place during his tenure however showed inability when and how many workmen were then transferred. He admits 35 employees have been transferred to RMC at a time which is called as mass transfer, 11 of them are in service at RMC and out of remaining 24 employees three have retired on superannuation and the rest opted for VRS. He admits alongwith one officer Mohan, he manages the work. According to him RMC is not a branch but a unit of one of the segment of the bank and added that he allotted work to the transferees to RMC however unable to point out which work was given to which employee. So far AMER is concerned he is unable to answer. Manager Mr. Andrade admits in cross-examination that 40 workman have been transferred to this section out of which 21 have availed VRS. He does not remember how many permanent employees are in section (AMER). He admits letters (Ex-107/24; Ex 38/90) given by workman/union were received by him but not replied these letters mention on the creation of RMC as artificial and transfer made to RMC with a view to outsourcing the work through contractors, which speaks volume,

16. According to Mr. Andrade banking business is carried out as per the guidelines of Reserve Bank of India and the Regulations. Banking regulations Act, 1949 Section 5 (cc) defines places of business of the bank as follows:—

"(cc) 'branch' or 'branch office, in relation to a banking company, means any branch or branch office whether called a pay office or sub-pay office or by any other name, at which deposits are received, cheques cashed or moneys lent, and for the purposes of Section 35 includes any place of business where any other form of business referred to in sub-section (i) of Section 6 is transacted."

Now we will see the place where the workmen are transferred initially 35 and later on totalling 60 is the 'place of business' in the light of the abovesaid defintion. Assistant Manager Mr, Shete admits in

cross-examination para 14 that RMC is not a branch, no customers come there. That means no banking transactions take place at RMC and consequently it is not a place of business of bank and still the transfer as above are made which throws light on the point of transfer.

17. As stated above, according to Mr.Shete RMC is a unit of one of the segments of the bank came to be created by way of reorganisation of business, a new support service segment with intention to play a pivotal role as proactive centre for assessment of skills, training and subsequent redeployment within the bank at its various branches, units, departments, sections. So far AMER which monitored by Mr. Andrade states that this section is created under the administrative control of Area Manager Employee Relations in order to keep pace withthe efficient working and overall business interests of the bank as bank was required to reorganise its business from time to time where there are 40 workers. In short, according to bank RMC / AMER are the training centres. It is to be noted that Mr. Shete in his Cross-examination para 14 clearly admitted that presently no training is being given to staff though earlier training was given to clerical staff. That means, workmen transferred there are not being given training or that place is not a training centre nor a business place. When admittedly RMC is not a branch, no customers come there, not a place of business, nor any training is being imparted there, question crops on why and for what, employees in large number are transferred there. When out of 120 permanent workers only 60 are working in branches, Mr. Shete as stated above, is not in a position to tell what work has been allotted to the transferees and on creation of RMC. According to him it is banks management decision forgetting he is part and parcel of the management unable to answer on the material aspect so also Mr. Andrade who is incharge also does not know on AMER, as seen from the record as a whole.

18. So far outsourcing work through contractors is concerned, according to the Learned Representative of bank to upgrade the bank its customer service and the like, confirming to international standards in the business interests and overall interests bank can give the work on contract when admittedly by way of surplus no retrenchment has taken place and that status of the workmen under reference is in no way disturbed. Management witness Mr. Sheets admits in his cross-examination page, 14 that work of AC package unit maintenance has been given on contract and further Mr. Andrade in his cross examination para 6 also admitted that workers in correspondence sections have been transferred to AMER and that their work has been given on contract. The Learned Representative Mr. Subrmanyan submits at this juncture that for out sourcing the work through contractors the RMC is created and permanent workmen are transferred there, and from this point of view also, transfer is unjustified. He has relied on Shankar mukherjee and Ors. reported in 1990-II LLJ 443 para 6 which states as under;"

"It is surprising that more than forty years after the independence, the practice of employing labour through contractors by big companies including public sector companies is still being accepted as a normal feature of labour-employment. There ie no security of service to the workmen and their wages are far below than that of the regular workmen of the company. This Court in Standard Vacuum Refining Co. of India Ltd. V/s. Its Workmen (1960 II LLJ 238) and Catering Cleaners of Souther Railway (1987-1 LLJ 345) has disapproved the system of contract labour holding it to be 'archaic', 'primitive' and of 'baneful nature'. The system which is nothing but an improved version of bonded-labour, is sought to be abolished by the Act. The Act is an important piece of social legislation for the welfare of the labourers and has to be liberally construed."

The fact that permanent work has been allotted to contractors, relying on the decision above it can safely be said that the transfer is outcome of outsourcing made with ulterior motives 19. So far the exit schemes, according to Mr.Subramanyan have direct nexus to reduce the permanent employees, it is to be noted that, mass transfer is effected in the year 2000 and that exit shcemes introduced in 2001. Management witnesses admit most of the workmen have taken VRS/ERS/ESS. As stated above according to workman Kanchan (WW-7) he took VRS out of frustration which throws light under what circumstances the exit schemes were accepted. If looked the transfer in this context, certainly smells on its bonafides and it is apparent action is malafide.

20, It is to be noted that management witness Mr. Shete on whom the bank heavily relies to point out that the action of the bank on transfer of workmen in the Award staff to RMC is bonafide and fully justified, who put in about 32 years service in the bank which is a Financial Institution, where honesty needs to be preserved for which we quote the observation of Their Lordships of Supreme Court in Union Bank of India V/s, Vishwa Mohan, 1998 4 SCC pg, 310:

"It needs to be emphasised that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer. If this is not observed, the confidence of the public depositors would be impaired."

Mr. Shete Flatly refused to produce any record as seen from the cross-examination para 14 on allotment of work to the transfer though said to have kept some record in this regard and thereby tried to suppress material facts from the Tribunal which indicates he has not come to the Tribunal with clean hands where order of management is to be adjudicated on the touch-stons of prejudice and that is to be looked at from the angle of justice or of natural justice. The object of the Principles of Natural Justice is to

ensure that justice is done. Justice means, justice between both the parties. The interest of justice equally demands that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of Natural Justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end as observed by the Hon'ble Apex Court in State Bank of Patiala and Ors. V/s S. K. Sharma reported in 1996 II CLR pg.29. Matter does not rest here. Mr. Shete by his application (Exhibit-130) dtd. 3-10-02 when matter was kept for Award showed ignorance on the order (Exhibit-40) dtd. 10-4-02 saying he came to know the order passed by the tribunal, only on 23rd September 2002 and tried to furnish information as directed by this Tribunal at Serial No 2-5 mentioned therein, when earlier on many dates the union by filing written submissions pointed out that adverse inference be drawn for non-furnishing) information vide order (Exhibit-40) which opposed affidavit by the union (Ex-132). It is to be noted that record clearly indicates order dtd. 10-4-2002 (Exhibit-40) had been referred by the union in their written submissions (Exhibit-118) filed on 29-8-2002 which copy was received by the bank that day only and thereafter it is seen from the record bank again, filed additional written submissions (Exhibit-125) on 19-9-2002.

On perusal of record of the Inspection register it is seen that on bahalf of the management one Ms. Smruti Karade took detailed inspection of record on 27-5-2002, which indicates bank was aware of the order and if that is so certainly does not lie in the mouth of Mr. Shete to say ignorance on the order which shows knowing fully well on the order (Exhibit-40), bank officer to supress the information filed false application (Exhibit-130) and thereby he has tendency to depose else and from that point of view banks contention going out through such an officer that transfer is bonafide difficult to implicit reliance.

Thus going through the evidence as a whole, the written submissions, rulings filed by both sides, discussion of evidence supra,and it the circumstances, it is apparent that the management bank creating artificial section in the name of RMC/AMER transferred the Award staff where there is no work with the sole object to give the work of permanent employees to contractor, therefore the transfer is totally against the Principles of Natural Justice, equity, good conscience and against the provisions of law and consequently not bonafide, therefore the action of the management is totally unjustified. In view of the decision in Canara Banking Corporations and Syndicate Bank since the transfers are malafide and made with ulterior motives this tribunal can interfere and set aside the same directing the management bank to place the transferees to their original posts. Consequently issue No. 3 & 4 are answered accordingly and hence the order :—

ORDER

The action of the management of Standard Chartered Grindlays Bank to transafer Award Staff to RMC/AMER Mumbai is unjustified and consequently management Bank is directed to place the transferred workmen in their original posts.

S. N. SAUNDANKAR, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2002

का. आ. 62.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-कम-लेबर कोर्ट, भुवनेश्वर के पंचाट (संदर्भ संख्या आई. डी. नं. 267/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-12-2002 को प्राप्त हुआ था।

[सं. एल-12012/92/99-आई.आर.(बी.-I)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 11th December, 2002

S.O. 62.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. No. 267/2001) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India, and their workman, which was received by the Central Government on 10-12-2002

[No. L-41012/92/99-IR(B-I)]

AJAY KUMAR, Desk officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUVANESWAR

PRESENT: Shri S. K. Dhal, OSJS, (Sr. Branch), Presiding Officer, C. G. I. T.-cum-Labour Court, Bhubaneswar.

BETWEEN

The Management of the Chief General Manager, State Bank of India, Local Head Office, IDCO Tower, Bhubaneswar—07 — 1st Party Management

AND

Their Workmen represented through the General Secretary, State Bank of India employees Union, Bhubaneswar Circle, State Bank of India, Zonal Office, Bhubaneswar-09 (Orissa). — 2nd Party-Union.

APPEARANCES :

Shri P. K. Mohanty, Dy. Manager (Law)	For the 1st Party-Management.
Shri Manmohan Nayak, Legal Heir of Late Binod Nayak.	For the 2nd Party Late Binod Nayak.

AWARD

The Government of India in the Ministry of Labour in exercise of powere conferred by clause (d) of sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No. L-12012/92/99/IR(B-I), dated 28-06-1999/ 05-07-1999:

> "Whether the action of the Management by not regularizing the services of late Binod Nayak is justified? Whether his legal heirs be eligible for the post on compassionate grounds? If not, what relief the legal heirs of the deceased employees are entitled to?"

2. The case of the 2nd Party may be stated in brief. Late Binod Nayak was a part time workman render this service in the State Bank of India, Khurda Branch as a Daily Labour since 1958. Later he was paid salary as a part time Sweeper from 1-3-1966. While in engagement late Binod Nayak applied for regularization of his service on 23-11-1990, 30-1-1994, 7-12-1994, 29-6-1996 and on 9-4-1997 but this was not considered. Late Naik died on 8-11-1998. Though he had worked for 240 days in a calendar year his service was not regularized for which his successors were deprived of pension and other financial benefits as applicable to the regular employees of the 1st Party-Management. In the Claim Statement, it was prayed to regularize the service of late Binod Nayak from 1966, to make payment of arrear salary from the year 1966 with interest, to make payment of P.F., Gratuity and pension from 1966 and to give compassionate posting to one of the legal heirs of Late Binod Nayak and to tender an unconditional apology to the whole nation for exploiting a Harijan worker in an independent country like India.

3. The 1st Party-Management has filed their Written Statement. It is pleaded that Late Binod Nayak was working as a part time sweeper from 1.3.1966 and was paid scale wages at pro rata basis depending upon the number of hours worked by him as per prevailing and/or extant guidelines of the Bank. The service of late Nayak was being utilized from 8.00 A.M. to 11.00 A.M. in the bank to clean and sweep the premises. Late Shri Nayak was also being paid pro rata wages as per extant guidelines of the Bank. His basic pay was Rs. 1,710/- as calculated in terms of the 6th bipartite settlement. He was also enjoying all benefits as are admissible to such employees under the agreement from time to time. It has been further pleaded that, for the first time Late Naik represented the 1st Party-Management during 1990 vide his representation dated 23-11-1990 for absorption of full time sweeper in the Bank. He was asked to submit the particulars relating to his date of birth and accordingly he submitted his reply on 30-1-1994 stating that his date of birth was 13-4-1945 without submitting any satisfactory proof thereof. Ultimately, with much persuasion, on 7-12-1994 late Nayak has submitted two affidavits in support of his date of birth without any primary documents to the satisfaction of the Bank. It has been further pleaded that, as per the bipartite settlement the 1st Party-Management during 1988 offered opportunities to the temporary part time employees for regularization of their services in the Bank. Accordingly, advertisements were made in the year 1988 as well as notice was issued in the year 1991 for regularization of such service, but Late Shri Nayak for reasons best known to him did not avail the opportunity. Another interview was held on 3-3-1994 for absorption of temporary employees but Late Nayak again could not furnish satisfactory proof of his date of birth etc. as required for which his case could not be considered. The further stand of the 1st Party-Management is that it was reliable learnt that Late Nayak was also working in the office of the S.D.O., Khurda and was dismissed from the said office. When correspondence was made with the S.D.O., Khurda, no reply was received about the cause of the dismissal of late Nayak. It was further learnt that, Late Nayak was also imposed with a fine of Rs. 500/- in a Misc. Case registered under section 109 of Cr.P.C. for flouting the instructions of the Executive Magistrate, Khurda. It was also further disclosed that Late Nayak was involved in a criminal case, which was registered in Khurda P.S. Case No. 45 of 1993 on the ground of commission of theft, assault, and wrongful restrained. All these facts created suspicion on the antecedent of Late Nayak, so the 1st Party-Management was not favoured to consider the case of late Shri Nayak for regularization of his service in a public sector financial institution. The allegation of exploitation of Harijan has been denied by the 1st Party-Management. The further pleading of the 1st Party-Management is that automatic regularization/absorption is not a guarantee. Applications were called from the temporary workmen. Late Nayak did not submit any application. He also did not attend any interview, so the question of his regularization/absorption was not there. As regards appointment of legal heir on compassionate ground it is pleaded that this provision is only applicable to the dependant of a deceased permanent employee of the bank. As Shri Naik was not a permanent employee his legal heirs are not entitled for any compassionate appointment.

4. On the above pleading of the parties, the following Issues have been settled.

ISSUES

1. Whether the reference is maintainable?
2. Whether the action of the 1st Party-Management by not regularizing the services of Late Shri Binod Nayak is justified?

3. Whether the legal heir of Shri Binod Nayak is eligible for the Post on compassionate ground?

4. To what relief the legal heirs of the deceased, Late Binod Nayak are entitled?

5. Before going to the merit of the case, it may be stated here that, as the Union did not take any step the legal heirs appeared before this Tribunal and has prayed to made them as a party which has been allowed. Both the parties have declined to adduce any oral evidence.

FINDINGS

ISSUE NO. I

6. The engagement of late Shri Nayak on casual basis has been admitted by the 1st Party-Management. Dispute was raised for his regularization. After failure of conciliation the Government of India has made the reference. When a dispute was pending and the appropriate Government has made the reference there is no reason to say that the reference is not maintainable. In other words I am of the opinion mat the reference is maintainable.

ISSUE NO. II

7. I have already indicated that no oral evidence has been adduced on behalf of either of the parties. Four documents have been filed to support the case of the 2nd Party regarding engagement of Late Shri Nayak. One is the Identity Card issued by the 1st Party-Management to Late Shri Nayak. It discloses that, he was working as a part time sweeper. The other document discloses the particulars of journey made by late Shri Nayak, part time sweeper. The third document discloses the particulars of journey made by late Shri Nayak. Both the above two documents reveals that late Shri Nayak was working as a part time sweeper. The last documents reveals that late Shri Nayak had availed the consumer loan from the bank on 29-1-1988 and has failed to submit the money receipts. No other documents have been filed to support the case of the 2nd Party that he has worked for more than 240 days in a calendar year. A workman claiming for regularization is required to satisfy some terms and conditions. Those are (i) that, he was engaged/ appointed in a post lying vacant, (ii) that, he was working in that post for more than 240 days and (iii) that, he had qualification for the said post. In the present case no materials have been placed that late Shri Nayak was engaged in a vacant post and that he had worked for more than 240 days. In the case of the Range Forest Officer - Versus S.T. Hadimani reported in JT 2002(2) SC 238, the Hon'ble Apex Court have been pleased to observe that when the Management denies regarding the engagement it is the duty of the workman to support his case by producing the letter of engagement/appointment and salary vouchers to prove that he had received the salary and have worked for 240 days in a calendar year which would suggest that he has worked for 240 days. But in this case no such materials have been placed. Besides the above facts the case of the 1st Party-Management have been supported by they documents filed by them. As per the settlement made in the year 1988 and 1991 for regularization of the above type of workers interview was held on 3rd March 1994 but late Shri Nayak did not furnish anything about his qualification and his date of birth. His name did not find place in the panel list. The action of the 1st Party-Management for calling for interview for regularization of the part time workmen and for preparation of panel list was challenged before the Hon'ble High Court in O.J.C. 2787/ 1997 by some of the part time workmen like late Shri Nayak. But the Hon'ble High Court upheld the action of the 1st Party-Management. One Natabar Das challenged the order of the Hon'ble High Court before the Hon'ble Supreme Court but that was dismissed. The panel for appointment of Messengers on permanent basis was valid up to 31-3-1997. This position has not been challenged by the 2nd Party. More over the documents filed by the 1st Party-Management supports their stands. So, in my opinion the 2nd Party (Late Shri Nayak) has failed to make out a case for regularization of his service as prayed for. Hence this Issue is answered accordingly.

ISSUE NO. III

8. Coming to the compassionate appointment, it is submitted on behalf of the 1st Party-Management that, the provision of compassionate appointment is only applicable to the permanent employees of the bank. The copy of the scheme for appointment on compassionate ground for the dependant of the deceased Employee/Employees retired on medical ground has been filed by the 1st Party-Management in support of their case. As per the Section 3-D of the Scheme for Appointment on Compassionate Grounds for Dependants of Deceased Employee/ Employees retired on Medical Grounds 'Employee' means a regular employee, whether in the subordinate, clerical or officers' whether confirmed or on probation and whether working full time or part time but will not include a temporary or casual employee. The engagement of late Shri Nayak. has not been disputed by the 1st Party-Management. The case of the 1st Party-Management is that he was a casual labourer and not a permanent employee of the bank. As per the scheme a part time workman comes under the definition of employee for availing the benefits of the scheme. The copy of the Identity Card issued by the Bank has been filed which reveals that Late Shri Nayak was a part time sweeper. Even if it is accepted for the argument sake that late Shri Nayak was not working permanently that he had a case for regularizatioo but it can not be now felt that he is not a part time employee in view of the recording of such fact in his Identity Card issued by the bank to late Shri Nayak. So, even/if late Shri Nayak was not permanent the scheme for compassionate appointment could not be fulfilled because he was a part time workman. Late Shri Nayak has got ten legal heirs. The legal heir certificate issued by the authority reveals that late Shri Nayak has got six sons one unmarried daughter. Two other

daughters have also been married. All the sons have attended the age of majority. When late Shri Nayak has worked for the Bank-Management and due to his negligence he could not take appropriate step for his regularization his legal heir should not be penalized or should suffer for his negligence. In my opinion, it is a fit case where the 1st Party-Management should consider for compassionate appointment to anyone of the son of late Shri Nayak. Hence, this Issue is answered accordingly.

ISSUE NO. IV

9. In view of my findings given in respect of Issue No. III, it is directed that the 1st Party-Management should sympathetically consider for compassionate appointment of one of the son of late Shri Nayak after observing all formalities under the Rules and terms and conditions of the scheme.

10. Reference is answered accordingly.

Diceated and Corrected by me.

S.K. DHAL, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2002

का. आ. 63.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डाक विभाग के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जयपुर के पंचाट (संदर्भ संख्या 33/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-12-2002 को प्राप्त हुआ था।

[सं. एल-40012/35/2001-आई.आर.(डी. यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 11th December, 2002

S.O. 63.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 33/2002) of the Central Government Industrial Tribunal/Labour Court, Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of D/o Post and their workman, which was received by the Central Government on 11-12-2002

[No. L-40012/35/2001-IR(D.U.)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JAIPUR

Case No. CGIT 33/2001

Reference No. L-40012/35/2001/IR(DU)

Sh. Ram Kumar, S/o Sh. Sardari Lal,
R/o Kukam Post Office, Biradwal,
Teh. Suratgarh, Sri Ganganagar-I. .....Applicant

Versus

Inspector, Post Offices,
Sri Bijay Nagar-335704,
Sri Ganganagar. .....Non-applicant

PRESENT:

Presiding Officer:	Sh. R.C. Sharma.
For the applicant:	None.
For the non-applicant:	Sh. B.N. Sandhu
Date of award:	21-11-2002.

AWARD

1. The Central Government in exercise of the powers conferred by Clause D of Sub-section 1 and Sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 (in short, the Act) has referred this industrial dispute to this Tribunal for adjudication which runs as under: —

> "Whether the action of the management or Department of Post i.e. Inspector, Post Office, Shri Bijay Nagar and Post Master, Post Office, Suratgarh, Distt. Sri Ganganagar in terminating the services of Sh. Ram Kumar S/o Sh. Sardari Lal w.e.f. 11-11-96 is justified? If not, to what relief the workman is entitled and from which date?"

2. The workman Sh. Ram Kumar in his statement of claim has pleaded that he was employed on the vacant permanent post on 1-1-96 on the basis of the daily wages by the non-applicant establishment, who continued to work by 10-11-96 without any interruption. Thus, he has worked for more than 240 days, but his services was terminated on 11-11-96 which is illegal and unjustified. The non-applicants have acted in violation of the provisions under Section 25-B, 25-F, 25-G and 25-H of the Act and Rules 77 and 78. The workman was not employed even after the several requests made by him to the concerned authorities. He has prayed that the order dated 11-11-96 terminating his service may be quashed and he may be reinstated with back-wages.

3. Resisting the aforesaid facts, the non-applicants in their written statement have averred that the provisions of the Act are not applicable to this dispute which is governed by the Extra Departmental Post and Telegraph Agent (Conduct & Services) Rules, 1964. They have further stated that Sh. Madan Lal, a permanent employee was on leave and in his place, the workman was employed on the temporary basis. On joining the duty by Sh. Madan Lal, employment of the workman automatically comes to an end. He was never appointed against the vacant post in the non-applicant establishment and that he has not continuously worked for a period up to 240 days.

4. On the pleadings of both the parties, the following points for determination were framed:—

1. Whether the applicant Sh. Ram Kumar was appointed in the non-applicant establishment on 1-1-96 as a worker on the daily wages basis, who continuously worked up to 10-11-96?

   BOA

2. Whether the termination of the services of the workman on 11-10-96 is unjustified and is illegal and the non-applicant establishment has violated the

provisions under Section 25-B, 25-F, 25-G & 25-H of the Industrial Disputes Act, 1947?

BOA

3. Whether the workman is entitled to be reinstated with all the consequential benefits?

BOA

4. Whether the case of the workman is governed by the rules of additional departmental postal agent (conduct & rules) rules, 1964 and that the Industrial Disputes Act is not applicable to the present dispute?

BONA

5. Relief.

5. I have heard the Id. representative for the non-applicants and have gone through the file.

6. The workman in order to establish his claim has adduced no iota of evidence on the record. Since 8-10-2002, the workman and his representative, both are not putting their appearance before the Court. It seems that the workman is unwilling to further contest his case. Accordingly, a "No Dispute Award" is passed and the reference is answered accordingly.

7. Let a copy of the award may be sent to the Central Government for publication under Rule 17 (1) of the Act.

R. C. SHARMA, Presiding. Officer

नई दिल्ली, 16 दिसम्बर, 2002

का. आ. 64.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार श्री ईश्वर लाल शर्मा, माईन ओनर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायालय भीलवाड़ा के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-12-2002 को प्राप्त हुआ था।

[सं. एल-29011/46/98-आई.आर.(एम.)]

बी. एम. डेविड, अवर सचिव

New Delhi, the 16th December, 2002

S.O. 64.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Bhilwara as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Sh. Ishwar Lal Sharma, Mine Owner and their workman, which was received by the Central Government on 10-12-2002

[No. L-29011/46/98-IR(M)]

B. M. DAVID, Under Secy.

अनुबन्ध

श्रम न्यायालय, भीलवाड़ा (राज.)

श्रम विवाद प्रकरण संख्या : 56/99

विवाद मध्य :

अध्यक्ष, भारतीय खान मजदूर संघ, भीलवाड़ा।

..... प्रार्थी/यूनियन

एवं

श्री ईश्वर लाल शर्मा, माईन ओनर,
शिवशक्ति सोप स्टोन माईन्स,
बी-245, जनता कालोनी,
अंकुर सिनेमा के पास, जयपुर।

..... विपक्षी/नियोजक

उपस्थित :

(श्री महेश चन्द्र पुरोहित, आर.एच.जे.एस, न्यायाधीश)

प्रार्थी की ओर से : श्री एस.एन. शर्मा, प्रतिनिधि।

विपक्षी के विरुद्ध एकपक्षीय कार्यवाही।

दिनांक 31-10-2002

पंचाट

भारत सरकार के श्रम मंत्रालय की अधिसूचना संख्या एल. 29011/46/98/आई आर (एम) दिनांक 21-4-99 के द्वारा निम्न विवाद इस न्यायालय को न्याय निर्णयन के लिए प्रेषित किया गया :—

"Whether the action of Shri Ishwarlal Sharma, Mines Lessee, Shiv Shakti Soap Stone Mines, Jaipur, to close down the Soap Stone Mines at Abhaipura, Distt. Bhilwara and terminating the services of 37 employees (List enclosed) is legal and justified ? If not, to what relief the concerned workmen are entitled to ?"

प्रार्थी यूनियन की ओर से स्टेटमैंट आफ क्लेम प्रस्तुत कर प्रकट किया गया कि प्रार्थी यूनियम भारतीय व्यावसायिक श्रम संघ अधि. के तहत एक पंजीकृत संघ है व विवादित समस्त श्रमिकगण इस संघ के सदस्य हैं। विवाद से संबंधित 37 श्रमिकगण विपक्षी माईन्स लेजी की शिव शक्ति सोप स्टोन माईन्स अभयपुरा पो. आमलदा में दिनांक 6-2-89 से अकुशल श्रेणी में सेवारत होकर 20-12-95 तक नियमित सेवाएं देते रहे हैं। श्रमिक निम्न हैं— *

1. कालू पुत्र रूपा जी कीर
2. दुर्गा पुत्र रामचन्द्र जी कीर
3. लादू पुत्र सूरजमल कीर
4. तुलसी राम पुत्र उदा जी कीर
5. छीतर पुत्र रामपाल जी कीर
6. कैलाश पुत्र रामपाल जी कीर
7. जगदीश पुत्र भागूता जी कीर
8. दुर्गा पुत्र मगना जी कीर

9. राम प्रसाद पुत्र मगना जी कीर
10. रामपाल पुत्र कजोड जी कीर
11. सुखदेव पुत्र रूपा जी कीर
12. उगमा पुत्र छगना जी कीर
13. उगमा पुत्र किशोर जी भील
14. कालू पुत्र किशोर जी भील
15. राम पाल पुत्र नाथू जी भील
16. नंदा पुत्र माना भील
17. नाथू पुत्र मदन लाल धाकड़
18. शंकर पुत्र काना धाकड
19. छगना पुत्र उदा जी गुर्जर
20. लादू पुत्र रायमल गुर्जर
21. मोहन पुत्र गोरू जी गुर्जर
22. राजू पुत्र छोटू जी रेगर
23. प्रभू पुत्र सूरजा भील
24. मगना पुत्र राजू गुर्जर
25. सूरजमल पुत्र फत्ता जी गुर्जर
26. सोदान पुत्र देवा जी गुर्जर
27. उदा पुत्र कालू जी गुर्जर
28. जय लाल पुत्र राजू जी गुर्जर
29. भोजा पुत्र कल्याण जी गुर्जर
30. हर लाल पुत्र हीरा जी रेगर
31. गोपाल पुत्र गोमा जी रेगर
32. लादू पुत्र गोमा जी रेगर
33. रतना पुत्र हीरा जी रेगर
34. देबी पुत्र गोमा जी रेगर
35. रणजीत पिता लादू जी रेगर
36. अंबा पुत्र उदा जी कीर
37. भुवाना पुत्र हीरा जी भील

उक्त श्रमिकों द्वारा विपक्षी के नियोजन में दी गई सेवाएं धारा 25(बी) के तहत नियमित सेवा की परिभाषा में आती है। इन्हें माह सितम्बर, 95 से वेतन नहीं दिया जा रहा है। 3 माह का वेतन चढ़ जाने पर श्रमिकों द्वारा मांग करने पर दिनांक 20-12-95 को रात्रि में ही खानदान कार्यालय पर विपक्षी ने खानदान बंदी का नोटिस चस्पा कर रातों रात जयपुर चले गये, जिसकी सभी श्रमिकों को दिनांक 21-12-95 को जब वे सेवाएं देने के लिए कार्यस्थल पर पहुंचे तो जानकारी मिली।

विपक्षी ने बिना सक्षम अधिकारी से खदान बंद करने की अनुमति लिये व बिना सेवारत श्रमिकों को बकाया वेतन व क्षतिपूर्ति राशि अदा किये, दिनांक 21-12-95 से उत्पादन कार्य बंद कर उक्त 37 श्रमिकों को नियोजन से बेदखल कर अधिनियम के समस्त प्रावधानों व धारा 25(एफ) की अवहेलना की है। सेवा पृथक करने के बाद से ही प्रार्थी श्रमिक बेरोजगार हैं। प्रार्थी यूनियन ने 21-12-95 से खादान उत्पादकता कार्य बंद कर उक्त 37 श्रमिकों की सेवाएं अवैधानिन तरीके से बंद करने के कारण उक्त श्रमिकों को समस्त वेतन व परिलाभों सहित पूर्व पद पर नियोजित करवाने की प्रार्थना की है।

विपक्षी की ओर से तामील के बावजूद किसी के उपस्थित नहीं होने पर उसके विरुद्ध एकपक्षीय कार्यवाही का आदेश दिया गया।

प्रार्थी की ओर से एकपक्षीय साक्ष्य में प्रार्थी कालू पुत्र रूपा जी कीर, दुर्गा पुत्र रामचन्द्र जी कीर, लादू पुत्र सूरज मल कीर, तुलसी रामपुत्र उदा जी कीर, छीतर पुत्र रामपाल ही कीर, कैलाशपुत्र रामपाल कीर, जगदीश पुत्र भागूता कीर, दुर्गा पुत्र मगना कीर, राम प्रसाद पुत्र भगना कीर, राम पाल पुत्र कजोड कीर, तुखदेव पुत्र रूपा जी कीर, उगमा पुत्र छगना कीर, उगमा पुत्र किशोर भील, कालू पुत्र किशोर भील, रामपाल पुत्र नाथू जी भील, नंदा पुत्र माना भील, नाथू पुत्र मदनलाल धाकड, शंकर पुत्र काना धाकड, छगना पुत्र उदा जी गुर्जर, लादू पुत्र रायमल गुजर, प्रभू पुत्र सूरजा भील, अंबा पुत्र उदा जी कीर, भूवाना पुत्र हीरा भील एवं श्री सत्य नारायण शर्मा के शपथपत्र प्रस्तुत किये गये, लेकिन जिरह के लिए दुर्गा पुत्र रामचन्द्र कीर, उगमा पुत्र किशोर भील व श्री सत्य नारायण शर्मा को ही प्रस्तुत किया गया।

बहस सुनी गई। पत्रावली का अवलोकन किया गया। यहां पर यह देखना है कि आया श्री ईश्वर लाल शर्मा, लेजी के द्वारा खदान बंद कर 37 श्रमिकों की सेवाएं समाप्त की है ?

गवाह सत्य नारायणशर्मा का शपथपत्र है कि भारतीय खान मजूदर संघ जिला भीलवाड़ा द्वारा भारतीय व्यवसायिक श्रमिक संघ अधि. के तहत पंजीकृत श्रम संघ है। शिव शक्ति सॉप स्टोन माईन्स, अभयपुरा में सेवारत 37 श्रमिकगण इस संघ के सदस्य हैं। प्रतिवर्ष कार्य समिति के चुनाव सम्पन्न होते रहते हैं जिनकी सूचनाएं भेजी जा रही है। श्रमिकों की न्यायोचित समस्याओं के बारे में मांग पत्र भिजवाये गये थे जो रसीदें प्रदर्श 1 से 3 हैं। नियोजक द्वारा समस्याओं का समाधान करना तो दूर रहा इन्हें माह सितम्बर 95 से 3 माह तक यानि नवम्बर 95 तक वेतन भुगतान हीं किया। दिनांक 22-12-95 को खदान से बालू पुत्र रूपा कीर, उगमा पुत्र किशोर भील, हुरड़ा स्थित कार्यालय पर आये व प्रबंधकों द्वारा खदान बंदी का चस्पा नोटिस देते हुए नियोजक द्वारा दिनांक 21-12-95 से खदान बंद किये जाने का अवगत कराया। खदान बंद करने की सूचना प्रदर्श 4 है। दिनांक 25-12-95 को नियोजक को प्रार्थना पत्र प्रेपित कर श्रमिकों को बकाया वेतन भुगतान किये जाने का निवेदन किया। प्रार्थनापत्र व रसीदें प्रदर्श 5 व 6 हैं। नियोजक द्वारा पुनः खदान उत्पादकता कार्य प्रारंभ कर दिया गया मगर उक्त 37 श्रमिकगणों को कार्य पर नहीं रखा गया न वेतन भुगतान किया गया। फलस्वरूप पुनः पत्र लिखा जो प्रदर्श पी. 7 है। प्रतिपरीक्षा में इसका कथन है कि श्रमिकगण का केस यूनियन के मार्फत पेश किया था। वाद की प्रति व असफल वार्ता प्रतिवेदन पेश कर दूंगा। गवाह दुर्गा पुत्र राम चन्द्र कीर, उगमा पुत्र किशोर भील, के शपथपत्र में वाद में वर्णित 37 श्रमिकगण विपक्षी नियोजक के यहां दिनांक 6-2-99 से नियोजित होकर दिनांक 20-12-95 तक नियमित रूप से कार्य करते रहे हैं। माल का भुगतान प्राप्त न होने का बहाना बना कर माह सितम्बर 95 से नवम्बर 95 तक का वेतन भुगतान नहीं किया। दिनांक 21-12-95 को प्रातः 8 बजे सेवाएं देने के लिए उपस्थित हुए हो वहां न तो ईश्वर लाल था, न मैनेजर था। गेट पर दिनांक 21-12-95 से खान बंदी का नोटिस चस्पा मिला। कुछ समय बाद माईन्स लेजी ईश्वर लाल खदान पर आये व अन्य श्रमिकों को लगा उत्पादक कार्य चलाया जो वर्तमान में जारी है परंतु उन्हें न तो 3 माह 20

दिन का वेतन दिया, न कार्य पर लगाया। प्रतिपरीक्षा में इनका कथन है कि समझौता अधिकारी के पास उसने केस लिख कर दिया था, नकल पेश कर दी। कालू पुत्र रूपा कीर, छीतर पुत्र रामपाल, कैलाशपुत्र रामपाल कीर, जगदीश पुत्र भागूता कीर, तुलसीराम पुत्र उदा कीर, दुर्गा पुत्र मगना कीर, राम प्रसाद पुत्र मगना कीर, रामपाल पुत्र कजोड कीर, सुखदेव पुत्र रूपा कीर, उगमा पुत्र छगना कीर, कालू पुत्र किशोर भील, रामपाल पुत्र नाथू भील, नंदा पुत्र नाना भील, प्रभू पुत्र सूरजा भील, अंबा पुत्र उदा कीर, लादू पुत्र रायमल गुर्जर, भुवाना पुत्र हीरा भील, लादू पुत्र सूरज मल कीर, नाथू पुत्र मदन धाकड़, छगना पुत्र उदा गुर्जर, शंकर पुत्र काना धाकड के शपथपत्र हैं कि दिनांक 21-12-95 को प्रात: 8 बजे सेवा देने उपस्थित हुए तो वहां कोई नहीं था। खान बंद करने का नोटिस लगा था। उनका वेतन बकाया है।

यहां पर प्रस्तुत दस्तावेजों का अवलोकन किया गया। प्रदर्श 4 नोटिस की फोटो प्रति बताई गई है। यह नोटिस आवश्यक सूचना का है जिस पर आज्ञा से खदान मालिक व विश्वनाथ शर्मा के हस्ताक्षर हैं। इस पर कोई सील लगी हुई नहीं है। यह किसी छपे हुए पेड पर भी नहीं है। प्रासंगिक विवाद में खान का लेजी ईश्वर लाल होना बताया गया है। इस पर ईश्वर लाल के हस्ताक्षर नहीं है। विश्वनाथ शर्मा के हस्ताक्षर के नीचे मैनेजर लिखा हुआ है परंतु मैनेजर की भी कोई सील नहीं है। नोटिस की इबारत लिखी गई है उसका लेखन किसी अन्य व्यक्ति का है तथा विश्वनाथ शर्मा का होना जाहिर नहीं होगा। विश्वनाथ शर्मा ईश्वर लाल शर्मा का मैनेजर हो ऐसी कोई साक्ष्य नहीं है। नोटिस प्रदर्श 4 पर ईश्वर लाल के कहीं कोई हस्ताक्षर नहीं है। ईश्वर लाल के निर्देशन में प्रदर्श 4 विश्वनाथ शर्मा ने हस्ताक्षरित किया हो इसकी भी कोई साक्ष्य नहीं है। ईश्वर लाल खदान का लेजी व विश्वनाथ शर्मा के क्या संबंध थे क्या विश्वनाथ शर्मा ऐसा नोटिस जारी करने के लिए ईश्वर लाल द्वारा अधिकृत किया गया था? ऐसी कोई साक्ष्य नहीं है। विश्वनाथ शर्मा की ईश्वर लाल लेजी की खादान में क्या स्थिति थी यह भी जाहिर नहीं है। इस प्रकार का नोटिस तैयार भी किया जा सकता है। इस प्रकार के नोटिस को कभी भी तैयार कर सकते हैं। इससे ईश्वर लाल शर्मा लेजी खदान पाबंद नहीं है। ईश्वर लाल शर्मा द्वारा खदान बंद करने के बारे में कोई कार्यवाही करना जाहिर नहीं है। अत: यह नहीं माना जा सकता कि ईश्वर लाल शर्मा लेजी ने शिवशक्ति सोप स्टोप माईन्स, अभयपुरा जिला भीलवाड़ा को बंद किया हो।

जहां तक कामगारों की सेवाए समाप्त करने का प्रश्न है, यहां विश्वनाथ शर्मा के द्वारा खदान को बंद करने का तथ्य नहीं माना गया है। विश्वनाथ शर्मा द्वारा कामगारों की सेवाएं समाप्त की हो इस बारे में भी कतई कोई दस्तावेजी साक्ष्य नहीं है। कलेम में यही बताया गया है कि 21-12-95 से खादान के उत्पादन कार्य बंद कर सेवाएं समाप्त की है परंतु ईश्वर लाल शर्मा लेजी खदान के द्वारा खान बंद करना नहीं पाया गया है। उसके द्वारा कोई कामगारों की सेवाएं भी समाप्त करना नहीं पाया गया है। अत: ऐसे तथ्यों के आधार पर यह जाहिर है कि ईश्वर लाल शर्मा खदान लेजी शिव शक्ति सोप स्टोन माईन्स, अभयपुरा जिला भीलवाड़ा द्वारा कोई खदान बंद नहीं की गई है और न उनके द्वारा 37 श्रमिकों की सेवाएं समाप्त की गई है।

The reference is answered as :—

Shri Ishwar Lal Sharma, Mines Lessee, Shiv Shakti Soap Stone Mines, Jaipur has neither closed down the Soap Stones Mines at Abhaipura, Dist, Bhilwara nor terminated the services of 37 employees. So they are not entitled to any relief.

पंचाट की प्रति भारत सरकार के श्रम मंत्रालय को भेजी जाये।

महेश चन्द्र पुरोहित, न्यायाधीश

नई दिल्ली, 20 दिसम्बर, 2002

का. आ. 65.—केन्द्रीय सरकार संतुष्ट हो जाने पर कि लोकिहत में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (ढ़) के उप-खण्ड (vi) के उपबंधों के अनुसरण में भारत सरकार के श्रम मंत्रालय की अधिसूचना संख्या का. आ. 2332 दिनांक 28-6-2002 द्वारा खनिज तेल (कच्चा तेल), मोटर और विमानन स्पिरिट, डीजल तेल, मिट्टी का तेल, ईंधन तेल, विविध हाइड्रोकार्बन तेल और उनके मिश्रण जिनमें सिंथेटिक तेल और इसी प्रकार के तेल शामिल हैं, जो कि औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की प्रथम अनुसूची की प्रविष्टी 26 में शामिल हैं, को उक्त अधिनियम के प्रयोजनों के लिए दिनांक 16-7-2002 से छ: मास की कालावधि के लिए लोक उपयोगी सेवा घोषित किया था;

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छ: मास की और कालावधि के लिए बढ़ाया जाना अपेक्षित है ;

अत: अब औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (ढ़) के उप-खण्ड (vi) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए 16-1-2003 से छ: मास की कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[फा. संख्या एस-11017/6/97-आई.आर.(पी. एल.)]

श्रीमती बी. आर. विज, अवर सचिव

New Delhi, the 20th December, 2002

S.O. 65.—Whereas the Central Government having been satisfied that the public interest so required that in pursuance of the provisions of sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), declared by the Notification of the Government of India in the Ministry of Labour S.O. No. 2332 dated 28-6-2002 the services in the **Industry engaged in manufacture of production of mineral oil (crude oil) motor and aviation spirit, diesel oil, Kerosene oil, fuel oil, diverse hydrocarbon oil and their blends including synthetic fuels, lubricating oils and the like** which is covered by item 26 of the First Schedule to the Industrial Disputes Act, 1947 (14 of 1947) to be a public utility service for the purpose of the said Act, for a period of six months form the 16th July, 2002.

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months.

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of Section 2 of the Industrial Disputes Act, 1947, the Central Government hereby declares the said industry to be a public utility service for the purposes of the said Act for a period of six months from the 16th January, 2003.

[F. No. S-11017/6/97-IR(PL)]

SMT. B. R. VIJ, Under Secy.

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